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ABSTRACT

The Presidential Commission on Indian Reservation Economies was established by Executive Order 12401 on January 14, 1983 to identify obstacles to Indian reservation economic development and to promote the development of a healthy private sector on Indian reservations. Nine appointed Commissioners, six Indians and three non-Indians, spent more than a year working with Indian tribes, federal, state, local governments and businesses to: identify specific impediments to Indian reservation development; analyze interrelationships among problems; propose and refute among themselves different conceptual approaches to solving problems; and deliberate on appropriate recommendations to be made to the President. Part I of the report contains the 37 recommendations of the Commissioners in reference to development framework (modernization of tribal governements, coordination of government support systems); capital formation (private ownership of tribal enterprises, Indian tax status); business development; labor markets (wage rate regulation, right to work); and development incentives. Part II provides the findings upon which the recommendations were made and presents a systematic identification of the problems found. Appendices include a population profile, budget breakdown for federal Indian domestic assistance, national hearing sites and names of individuals testifying, an overview of the private sector opportunities and constraints study, and a discussion of tribal water rights issues. (ERB)

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Report and Recommendations to the President of the United States

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Presidential Commission on Indian Reservation Economies

November 1984

RC015095

Executive Office Of The President
Presidential Commission On Indian Reservation Economies
Suite 765 ☐ 1717 H Street, N.W. ☐ Washington, D.C. 20006 ☐ (202) 653-2436

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November 30, 1984

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

We are pleased to submit to you the Report of the Presidential Commission on Indian Reservation Economies which, consistent with your charge to the Commission, identifies legal and governmental obstacles to economic development on reservations and offers recommendations to all levels of government, including tribes, intended to promote reservation economic growth.

In the preparation of these recommendations we listened most attentively to the views of Indian people themselves, who testified formally at 16 hearings and counseled with us and our staff on a continuing basis. Additionally, we utilized previous studies, experts in the field, survey data and special staff reports to identify legal, governmental and other barriers to economic development.

In arriving at our recommendations we were mindful of several general principles: the importance of preserving the government-to-government relationship which is a cornerstone of your Federal-Indian policy; the need to recognize and build upon the ever growing competence of Indian people and their leaders; the importance of encouraging individual Indians to enter the business world; the need for tribes to act to promote business development on reservations by Indian and non-Indian entrepreneurs; and the importance of extending to tribal governments the regulatory and financial incentives available to other governments.

In the light of our findings and consistent with these broad principles and goals, we offer this report and recommendations for your consideration. We deeply appreciate your high level of commitment to Indian people which resulted in the creation of this Commission and thank you for your sustained support.

Respectfully submitted,

Robert Robertson
Co-Chairman

Ross O. Swimmer
Co-Chairman

FOREWORD

President Reagan established the Presidential Commission on Indian Reservation Economies by Executive Order 12401 on January 14, 1983, to identify obstacles to Indian reservation economic development and to promote the development of a healthy private sector on Indian reservations. Nine Commissioners, Indian and non-Indian, were appointed to serve on the Commission. They were selected for their backgrounds in business, Indian affairs and government. The Commissioners spent more than a year identifying specific impediments to Indian reservation development; analyzing the interrelationships among problems; proposing and refuting among themselves different conceptual approaches to solving problems; and finally deliberating on appropriate recommendations to be made to the President. It also engaged in a number of special initiatives, working with Indian tribes, federal, state, local governments and businesses.

Part I contains the recommendations of the Commissioners, but the reader is directed also to Part II which puts forward the findings upon which the recommendations were made and presents a systematic identification of the problems found.

The Commission began its work with three assumptions. The first assumption was that obstacles impairing Indian reservation economic development are known by the Indian people. The second assumption was that the technology for analyzing how obstacles impeded economic success was also known and could be applied to studying the problems. The third assumption was that the President's American Indian Policy Statement of January, 1983 would set the parameters within which recommendations would be made.

In order to fulfill the charges set forth in the Executive Order the Commission conducted 16 field hearings throughout the United States. In addition, the Commission reviewed previously identified obstacles in the Indian economic development literature. In conjunction with the identification of obstacles from the hearings and literature review, additional studies were undertaken to expand the points of view on obstacles and to better analyze their interrelationships and impacts. These were: a critical path to failure study of federal programs and administrative systems which impact on Indian economic development, an analysis of intergovernmental conflicts, and a private sector survey on opportunities and constraints.

In the process of taking oral and written testimony, developing concept papers, and meeting with individuals representing tribal governments, Alaska villages, Indian businesses, Indian business and social organizations, banks, law firms, venture capital firms, small and large businesses, universities, investment bankers, and federal, state, and county governments, the Commission has learned that there is consensus on what the problems are and on the need for fundamental change. In fact, the major Indian organizations have been calling for change since the American Indian Policy Review Commission delivered its Report in 1976.

We believe it is now time to act.

Co-Chairman, Robert Robertson

Co-Chairman, Ross O. Swimmer

Washington, D.C.
November 30, 1984

REPORT AND RECOMMENDATIONS OF THE

PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES

Part I

TABLE OF CONTENTS

	Page
TRANSMITTAL LETTER	i
FOREWORD	ii
I THE COMMISSION	1
HISTORICAL PERSPECTIVE AND MANDATE OF THE COMMISSION	3
COMMISSIONER BIOGRAPHIES	9
COMMISSION STAFF	13
EXECUTIVE ORDER	15
FACT SHEET: INDIAN POLICY STATEMENT	19
CHARTER	21
II RECOMMENDATIONS OF THE COMMISSION	23
INTRODUCTION TO THE RECOMMENDATIONS	25
DEVELOPMENT FRAMEWORK	26
CAPITAL FORMATION	39
BUSINESS DEVELOPMENT	48
LABOR MARKETS	52
DEVELOPMENT INCENTIVES	57

SCOPE OF WORK AND FINDINGS OF THE

PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES

Part II

TABLE OF CONTENTS

Page

I SCOPE OF WORK & METHODOLOGY..... 3

II SPECIAL INITIATIVES TO PROMOTE ECONOMIC DEVELOPMENT.....11

III FINDINGS OF THE COMMISSION.....17

Composition of Obstacles to Indian Reservation Economic Development.....19

Tribal Government Obstacles to Indian Reservation Economic Development.....27

Bureau of Indian Affairs Obstacles To Indian Reservation Economic Development.....55

Federal Obstacles to Indian Reservation Economic Development.....55

State & Local Government Obstacles to Indian Reservation Economic Development.....67

APPENDICES.....75

Population Profile.....79

Budget Breakdown for Federal Indian Domestic Assistance.....87

National Hearings Sites: Individuals and Organizations Providing Testimony.....99

Overview of the Private Sector Opportunities and Constraints Study.....113

Tribal Water Rights Issues: Prospect for Economic Development.....127

I THE COMMISSION

HISTORICAL PERSPECTIVE AND MANDATE OF THE COMMISSION

President Ronald Reagan, on January 24, 1983, issued the Administration's American Indian Policy Statement. His comprehensive policy declaration reaffirmed the government-to-government relationship of Indian tribes with the United States, recognized the primary role of tribal governments in reservation affairs, and called for special efforts to develop reservation economies.

This policy is an extension and an expansion of the 1970 national Indian policy of self-determination for Indian tribes set forth by President Nixon. The concept of self-determination was a major departure from past American Indian policy. For nearly 200 years national policy had wavered on the one hand towards the goal of removal, or separation from the rest of society, and on the other hand, towards the goal of assimilation, or absorption of the Indian culture into the dominant culture.

Self-determination was a new concept that would make it possible for Indian tribes and people to maintain their distinction as Indians, while at the same time to develop new ways of life which they would choose, including economic activities which would enable them to fit into the modern world and present-day American society.

President Reagan emphasized that it was the goal of his administration to turn the ideals of the self-determination policy into reality. The principles of self-determination and of self-government set forth in the 1970 national Indian policy and in the 1975 Indian Self-Determination and Education Assistance Act were good starting points. However since 1975 there has been more rhetoric than action.

The President pointed out that movement towards effective self-determination would be accompanied by continued fulfillment of the federal trust responsibility for the physical and financial resources held in trust for the tribes and their members. In addition, he called upon Congress to replace House Concurrent Resolution 108 of the 83rd Congress, the resolution which established the now discredited policy of terminating the Federal-Indian relationship. The Congress had already implicitly rejected the termination policy by enacting the 1975 Indian Self-Determination and Education Assistance Act. However, because the termination policy declared in H. Con. Res. 108 has not been expressly and formally repudiated by a concurrent resolution of Congress, it continues to engender among the Indian people an apprehension that the United States may not in the future honor the unique relationship between the Indian people and the federal government. The President stressed that a lingering threat of termination has no place in his administation's policy of self-government for Indian tribes.

The policy statement went on to hold that such actions are but the first steps in restoring control to tribal governments. Much more needs to be done. Without sound reservation economies, the concept of self-government has little meaning. In the past, despite, or perhaps because of its good intentions, the federal government has been one of the major obstacles to Indian economic progress. The President has committed his administration to removing impediments to Indian economic development and to encouraging cooperative efforts among tribes, federal, state and local governments, and the private sector toward developing reservation economies.

The President's policy recognized that while tribal governments have the primary responsibility for meeting the basic needs of their communities, they can not succeed without viable economies. As a major initial step, President Reagan established the Presidential Commission on Indian Reservation Economies. The Commission, comprised of tribal, private sector and federal government leaders, was charged to identify obstacles to economic growth in the public and private sector at all levels, to examine and recommend changes in federal law, regulations and procedures to remove such obstacles, to identify actions which state, local and tribal governments could take to rectify identified problems, and to recommend ways for the private sector to participate in the development and growth of reservation economies. The Commission was further charged with the responsibility for advising the President on actions required to create a positive environment for the development and growth of reservation economies.

This mandate with its agenda for action and its emphasis on self-determination, self-government and economic development was a major change from past vacillating Indian policies. There has been a long succession of failed or discredited policies that have had disastrous effects on Indian tribes and Indian people. The major historical policies may be described as follows:

Trade Restrictions

Early policy positions of the United States limited relations between Indians and non-Indians by regulating and restricting trade. The Northwest Ordinance of 1787 established a framework for settlement beyond the Alleghenies by asserting that Indian "land and property shall never be taken from them without their consent ...they shall never be invaded or disturbed unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall from time to time be made for preventing wrongs done to them, and for preserving peace and friendship with them." In the United States Constitution, Article 1, Section 8, it is stated that "the Congress shall have power...to regulate commerce with foreign nations, and among the several states, and with Indian tribes." Four temporary Indian trade and intercourse acts were passed during the decade 1790 to 1799 (Acts of 1790, 1793, 1796, 1799.) Permanent trade and intercourse acts were passed in 1802, and 1834. Despite these trade restrictions, exploitation of Indians through trade was one of the major causes of conflict between Indians and non-Indians on the western frontier.

Forced Removal

When trade restrictions proved ineffective in maintaining peaceful relations between Indians and their neighbors, proposals for removing the Indians to unsettled lands west of the Mississippi River began to surface. This served the double purpose of making available vast areas of land for settlement and of solving the problem of conflict of authority caused by the presence of Indian nations within state boundaries. The first removal of Indians and exchange of land treaty was concluded in 1817. For the next 30 years Indian treaty making was concerned almost solely with removing certain tribes from their eastern homelands to the western wilderness.

Congress incoporated these forced removal elements from treaty making in the Indian Removal Act of 1830. Under the removal legislation, and the treaties from this period, most of the Five Civilized Tribes--Cherokees, Chickasaws, Choctaws, Creeks and Seminoles--were taken from their homes in the southeastern states and marched along the infamous "Trail of Tears" to a new Indian territory, now the state of Oklahoma. Indian tribes from the northeast and Great Lakes region were also

subjected to the removal policy. The forced removal policies were justified, in part, based on the ideal that Indians should be protected from repeated depredations by settlers. Probably 100,000 Indians were resettled as a result of the different removal policies. A major flaw, however was that Indians could not be removed far enough or fast enough to stay out of the path of the ever-advancing settlers.

Reservations

As the settlers forged their way westward, another form of removal was incorporated into treaties made with tribes. This was the establishment of reservations. In 1867 and 1868 the Indian Peace Commission negotiated the last of the 370 treaties made between tribes and the United States. These final treaties required tribes of the upper great plains, the southwest and the northwest to settle on various reservations. The last treaty, entered into with the Nez Perce of Oregon on August 13, 1868, removed that tribe to a reservation in Idaho.

However, the reservation system, even for those Indians who acquiesced to it, contained many destructive elements. It made Indians wards of the federal government. Traditional leaders of the tribe were by-passed and made ineffective. The possibility and the need of providing their own food, clothing and shelter was taken from the reservation Indians. While there were some meager efforts of "reservation development," no significant system of economic and cultural protection was created to permit Indian tribes to achieve economic viability and independence. There was also forced breakdown of tribal traditions and native religious practices.

Land Allotment/Assimilation

The General Allotment Act was passed in 1887. Its intent was to break up tribal land holdings, allot small parcels of 40 to 160 acres to Indian families or individuals, and eventually assimilate the Indian farmers into the larger community. Subsequent allotment acts also offered citizenship status with the acquisition of land as an incentive to get Indians to participate in the allotment process. Some Indians became citizens this way, but it was not until 1924, when Congress passed the Indian Citizenship Act, that United States citizenship was conferred upon all Indians and Alaska Natives.

The allotment policy became a problem for the nation's tribes. In the nearly 50 years of the allotment period, Indian land holdings were reduced from more than 136 million acres in 1887 to less than 50 million acres in 1934, when the policy was abandoned completely. The 1928 Meriam Report, "Problems of Indian Administration", contained the following appraisal:

> "When the government adopted the policy of individual ownership of the land on the reservations, the expectation was that the Indians would become farmers ... as if the government assumed that some magic in individual ownership of property would in itself prove an educational, civilizing factor, but unfortunately this policy has for the most part operated in the opposite direction. Individual ownership, in many instances, permitted Indians to sell their allotments and to live for a time on the unearned income resulting from the sale."

However, part of the motivation for such land sales lay in the lack of capital by the Indians so that they could farm the land or acquire livestock for ranching or mixed farming. In order to survive, many allottees were forced to sell their lands.

Revival of Tribal Organizations

The Indian Reorganization Act of 1934 ended the allotment period and its attempts to dismantle traditional tribal groups. The IRA initiated efforts by the federal government to impose constitutional forms of government on tribes, and to work with tribes for the improvement of living conditions on reservations. Tribes were told that if they adopted the hastily mimeographed constitutions, drafted by the BIA, funds would be forthcoming to support economic development through the corporate charters which were also statutorily imposed. The Bureau of Indian Affairs provided a continuing role for itself by writing approval authorities into the tribal constitutions. Access to capital was not forthcoming, but continuing control by BIA was constitutionalized and made a part of each adopting tribe's organic law.

Termination

Efforts to terminate the special federal relationship of Indian tribes with the United States culminated in 1953 with passage of House Concurrent Resolution 108, adopted by both the House and Senate. This resolution stated that it was the policy of Congress "to make the Indians . . . subject to the same laws and entitled to the same privileges and responsibilities as are acceptable to other citizens." Subsequent termination acts passed between 1954 and 1962 terminated 109 Indian tribes, bands and rancherias.

Federal legislation between 1973 and 1980 restored six of the terminated tribes and four of the California bands to federally recognized status. As had been the case with prior national Indian policies, termination failed in its attempt to come to grips with the problems facing American Indians.

Relocation

Efforts by the federal government in the 1950's to relocate Indians away from the reservations coincided with the termination policy. A Congressional report in 1954 entitled, "Survey Report on the BIA" generalized that "most of the reservations are overpopulated and could not support the populations at anything approaching a reasonably adequate standard of living." Rather than seeking a way to make the reservations financially secure places to live, the federal government chose to follow a simpler approach to the population/resource imbalance--relocation of Indians away from the reservations. Thinning out the populations of the reservations, however, did not solve the reservation's economic problems.

Self-Determination

In the 1960's, Indian tribal groups, like other minority groups, began assuming a more active role in their own socio-economic programs and in the shaping and implementation of federal governmental programs. Increased participation and involvement in matters affecting Indian communities stimulated the announcement in 1970 of a new policy of Indian self-determination. President Nixon's policy statement said: "The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions." The policy rejected both the termination policy and governmental paternalism, going on to say: "We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal

group. And we must make it clear that Indians can become independent of federal control without being cut off from federal concern and federal support." The policy was enacted into law through passage of the Indian Self-Determination and Education Assistance Act of 1975.

Self-Government and Economic Development

President Reagan, in his January 24, 1983 American Indian policy statement, endorsed the concept of self-determination and initiated a process to give it meaning. A copy of the policy statement is contained in this report.

The President indicated that there had been more rhetoric than action in the implementation of the self-determination concept. His policy statement pointed out that:

> "Instead of fostering and encouraging self-government, federal policies have, by and large, inhibited the political and economic development of the tribes. Excessive regulation and self-perpetuating bureaucracy have stifled local decision making, thwarted Indian control of Indian resources and promoted dependency rather than self-sufficiency."

The President also called for actions to clarify the legal privileges of the tribal governments and to give them the tax status of states and other local governments.

An important portion of the President's policy statement is devoted to the development of Indian reservation economies, because "without sound reservation economies, the concept of self-government has little meaning." The President noted that Indian leaders had identified economic development as their number one priority.

Establishment of the Commission

The President issued Executive Order 12401 on January 14, 1983, which established the Commission. A copy of the Executive Order is contained in this report.

The Commission consists of nine members, Indian and non-Indian, appointed by the President from the private sector, reservation tribal government and the federal government. An Indian representative and a non-Indian representative were appointed as Co-Chairmen.

The functions of the Commission were laid out as follows:

(a) Advise the President on what actions should be taken to develop a stronger private sector on federally recognized Indian reservations, lessen tribal dependence on federal monies and programs, and reduce the federal presence in Indian affairs. The underlying principles of this mission are the government-to-government relationship, the established federal policy of self-determination, and the federal trust responsibility.

(b) Define the existing federal legislative, regulatory and procedural obstacles to the creation of positive economic environments on Indian reservations.

(c) Identify and recommend changes or other remedial actions necessary to remove these obstacles.

(d) Define the obstacles at the state, local and tribal government levels which impede private sector investments on reservations.

(e) Identify actions which these levels of government could take to rectify the identified problems.

(f) Recommend ways for the private sector, both Indian and non-Indian, to participate in the development and growth of reservation economies, including capital formation.

The Executive Order was amended September 21, 1983, to extend the Commission's term through the end of 1984 and call for the final report to be submitted to the President and the Secretary of the Interior by November 30, 1984. A Charter which further elaborated the functions of the Commission and which made provision for administrative and budgetary support was issued by the Secretary of Interior on October 6, 1983.

The Commission was authorized to conduct hearings, interviews and reviews and to confer with Indian tribal government officials and tribal members, private sector business officials and managers, and other parties dealing with matters pertaining to the Commission's mission. Executive agencies were called upon to provide the Commission with such information as necessary for the effective performance of its duties.

COMMISSIONER BIOGRAPHIES

Robert Robertson (Co-Chairman)

Mr. Robertson is Vice President of the Occidental International (Petroleum Corporation.) He has been active in Indian affairs for many years. He is from Carson City, Nevada, and was Executive Administrator to Governor (now U.S. Senator) Paul Laxalt. In 1969, he was appointed to head the National Council on Indian Opportunity under the auspices of the Vice President's office during the Nixon Administration. Later, he served as special assistant to Secretaries of the Interior, Rogers C.B. Morton, Stan Hathaway and Thomas Kleppe. Mr. Robertson earned his Bachelor's degree from Georgetown University and pursued supplemental studies at John Carroll University in Cleveland Ohio.

Ross O. Swimmer (Co-Chairman -- Cherokee)

Mr. Swimmer is Principal Chief of the Cherokee Nation of Oklahoma. He is active in national Indian organizations and currently serves as the Vice Chairman of the Council of Energy Resource Tribes (CERT). He is strongly committed to the preservation of tribal culture and heritage, and is involved with Tribal and State Historical and Educational Societies. He is a Director of the Inter-Tribal Council of the Five Civilized Tribes and serves on several state and local boards and commissions. He is a member of the Oklahoma and American Bar Associations. Mr. Swimmer earned a Bachelor's degree in Political Science and a Juris Doctor from the University of Oklahoma.

Daniel Alex (Athabascan)

Mr. Alex is the head of Eklutna Utilities, Inc. and ERCO, Inc., a construction company. Mr. Alex has, since its inception, been involved in matters concerning the Alaska Native Claims Settlement Act. He has served over twenty different civic and community organizations and is a scientist, mathematician and business executive and served as a geophysicist with the United States Navy. In 1973, he left the Navy to become President of Eklutna Corporation. He is currently President of the Alaska Native Land Managers Association and Chief Executive of Dan Alex and Associates.

Ted Bryant (Cherokee-Choctaw)

Mr. Bryant is the Director of Native American Programs for the firm of Deloitte, Haskins and Sells in the Denver, Colorado office. Prior to this, he operated his own consulting firm specializing in management capacity building. Mr. Bryant was employed by the Department of Housing and Urban Development, Region VIII as assistant to the Director, developing management initiatives for Indian housing authorities. He holds a Bachelor of Science degree from the University of Denver. In 1967, he was elected to the Colorado State Legislature. As a two and one-half term State Legislator, he was dedicated to the advocacy of American Indian matters. Mr. Bryant was appointed Regional Director of the Denver office of the federal agency, ACTION, where he managed a staff of over one hundred people, a multi-million budget and guided the efforts of 9,000 volunteers. Mr. Bryant is an active member of the National Congress of American Indians' Economic Development Committee and is currently president of the American Indian National Republican Federation.

Dr. Manuel H. Johnson

Dr. Johnson is Assistant Secretary of the Treasury for Economic Policy. Prior to his appointment, he was an associate professor of economics in the graduate school at George Mason University, Virginia, and an adjunct scholar of the Heritage Foundation. His research and writing have been concentrated in the area of political economy and public policy. He is the author of three books and has published over 30 articles in such journals as the Wall Street Journal, the British Journal of Industrial Regulations and the Quarterly Review of Economics and Business. He is also co-editor and regular contributor to the international professional publication, Journal of Labor Research. Dr. Johnson was educated at Troy State University, Alabama (B.S., Economics), and Florida State University (M.S. and Ph. D. Economics).

B.Z. Kastler

Mr. Kastler has enjoyed a long and distinguished career in the State of Utah. He is currently serving as Chairman of the Board of one of the State's major fuel suppliers and its subsidiary companies. As an attorney, he joined the Mountain Fuel Supply Company in 1952. Prior to that, he was engaged in the private practice of law. A native of Billings, Montana, Mr. Kastler attended the University of Colorado and graduated Summa Cum Laude from the University of Utah School of Law. He is admitted to practice in Federal courts, the courts of Montana and Utah, and before the Supreme Court of the United States. During 1963-64, Mr. Kastler was a Member of the House of Representatives. He was also Vice Chairman to the Utah Legislative Conference. Mr. Kastler has long been active in civic and business affairs in the Salt Lake area. He served as President of the Salt Lake Area Chamber of Commerce in 1977-78.

David J. Matheson (Coeur d'Alene)

Mr. Matheson is Tribal Chairman of the Coeur d'Alene Nation in Idaho. His primary interest as a tribal leader is obtaining a goal of monetary self-sufficiency for his people and in developing his Tribe's human and natural resources. Mr. Matheson served on several tribal committees devoted to researching and planning economic enterprise development. In that capacity, he directed the Tribe's Planning and Natural Resources Division and served as the Economic Development Planner for the Tribe. In addition, he served on the City of Couer d'Alene's Panhandle Area Council, the planning body for northern Idaho's economy. Before returning to the reservation, Mr. Matheson majored in Political Science at the University of Washington where he was head of the American Indian Students Association.

Neal A. McCaleb (Chickasaw)

Mr. McCaleb owns an architectural and engineering firm, McCaleb and Associates, in Edmond, Oklahoma. He has held offices in numerous business and civic organizations including the Edmond Chamber of Commerce, Young Men's Christian Association and is presently on the Board of Directors of the Memorial Bank of Oklahoma City. He has also had an active political career. In 1974, he was elected to the Oklahoma State Legislature where he served eight years, four of them as Republican floor leader in the House of Representatives. In 1971 President Nixon appointed him to the National Council on Indian Opportunity. A graduate of Oklahoma State University with a Civil Engineering Degree, Mr. McCaleb belongs to the nation's leading engineering societies.

Walter B. McCay (Cherokee)

Mr. McCay currently serves as an advanceman for President Ronald Reagan, covering his trips in the United States and abroad. Mr. McCay was also the lead advance man for then Governor Reagan between 1976 and 1979. As an international entrepreneur, Mr. McCay spends a great deal of time traveling world wide promoting his many business interests. Based also in Paradise Valley, Arizona, he heads Agricultural Products, Ltd.. He also has major interests in a substantial farming operation and luxury vehicle leasing company. In college, Mr. McCay managed a large chemical enterprise. He belongs to the Entomological Society of America, is a past president of Sigma Chi Alumni Association and is a member of several agricultural associations in California and Arizona.

COMMISSION STAFF

Dr. Frank Anthony Ryan, Executive Director
Eric Rudert, Deputy Director
Jerry Muskrat, General Counsel
Louis G. Sleeper, Counselor for Special Economic Initiatives

Daphne Berwald
Jacquelyn M. Dean
Pamela DeRensis
Sandra Gjelde
Ian Hawkins
Janice Kekahbah
Mona Merrill
Michele Peralta
Barbara Simms
Corrine Skye

The following people are listed with their respective Agency heading, as they were on detail or loan to the Commission for a specific period of time.

Department of Agriculture
Dr. William Carmack

Department of Education
Dr. Jerald Levine
Lennie Pickard
Dr. Frank Anthony Ryan
Victoria Thornton

Department of Health and Human Services
Indian Health Service
Anne Kendall

Department of Housing and Urban Development
Tanna Chattin

Department of the Interior
Samuel Goodhope
Janet Johnson
Dan McGuire
Judy Moy
Jerry Muskrat
Meridith Stanton
Willie Taylor

Department of Labor
Eric Rudert

Small Business Administration
Deborah Diggs

COMMISSION STAFF -- continued

Department of State
(Trade and Development Program)
Louis G. Sleeper

Department of the Treasury
Dave Peterson

Other Organizations:
National Consumer Cooperative Bank
David Kirker

United South and Eastern Tribes
John Murphy, Intern

Intern
American University
Eric Ertman, Law Student

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 14, 1983

Executive Order 12401

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PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES

By the authority vested in me as President of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory commission to promote the development of a strong private sector on Federally recognized Indian reservations, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established a Presidential Commission on Indian Reservation Economies.

(b) The Commission shall be composed of no more than nine members, who shall be appointed by the President from among the private sector, reservation tribal governments, economic academicians, and Federal employees.

(c) The President shall designate a non-Indian representative and an Indian representative to serve as cochairmen of the Commission.

Sec. 2. Functions. (a) The Commission shall advise the President on what actions should be taken to develop a stronger private sector on Federally recognized Indian reservations, lessen tribal dependence on Federal monies and programs and reduce the Federal presence in Indian affairs. The underlying principles of this mission are the government-to-government relationship, the established Federal policy of self-determination and the Federal trust responsibility.

(b) The Commission will focus exclusively on the following items, and not on new Federal financial assistance:

(1) Defining the existing Federal legislative, regulatory, and procedural obstacles to the creation of positive economic environments on Indian reservations.

(2) Identifying and recommending changes or other remedial actions necessary to remove these obstacles.

(3) Defining the obstacles at the State, local and tribal government levels which impede both Indian and non-Indian private sector investments on reservations.

(4) Identifying actions which these levels of government could take to rectify the identified problems.

(5) Recommending ways for the private sector, both Indian and non-Indian, to participate in the development and growth of reservation economies, including capital formation.

(c) The Commission should review studies undertaken in the last decade to obtain pertinent recommendations that are directly related to its mission.

(d) The Commission shall, unless sooner extended, submit a final report to the President and to the Secretary of the Interior within six months after appointment of the last Commissioner, or by September 30, 1983, whichever comes earlier.

Sec. 3. Administration. (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission with such information as may be necessary for the effective performance of its functions.

(b) Members of the Commission may receive compensation for their work on the Commission. While engaged in the work of the Commission members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) The Secretary of the Interior shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the effective performance of its functions.

(d) The Commission will meet approximately 15 times at the call of the chairmen. All meetings of the Commission and all agenda must have prior approval of the chairmen.

(e) In carrying out its responsibilities, the Commission is authorized to:

(1) Conduct hearings, interviews, and reviews at field sites, or wherever deemed necessary to fulfill its duties.

(2) Confer with Indian tribal government officials and members, private sector business officials and managers, and other parties dealing with matters pertaining to the Commission's mission.

Sec. 4. General Provisions. (a) Notwithstanding the provisions of any other Executive order, the responsibilities of the President under the Federal Advisory Committee Act, as amended, except that of reporting annually to the Congress, which are applicable to the advisory commission established by this Order, shall be performed by the Secretary of the Interior, in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate 60 days after it transmits its final report to the President, or on December 31, 1983, whichever comes earlier.

THE WHITE HOUSE,
January 14, 1983.

RONALD REAGAN

Federal Register
Vol. 48, No. 186
Friday, September 23, 1983

Presidential Documents

Title 3—

The President

Executive Order 12442 of September 21, 1983

Presidential Commission on Indian Reservation Economies

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), it is hereby ordered as follows:

Section 1. Section 2(d) of Executive Order No. 12401 is hereby amended to provide as follows:

"The Commission shall submit its final report to the President and the Secretary of the Interior by November 30, 1984."

Sec. 2. Section 4(b) of Executive Order No. 12401 is hereby amended to provide as follows:

"The Commission shall, unless sooner extended, terminate 30 days after it transmits its final report to the President.".

Ronald Reagan

THE WHITE HOUSE,
September 21, 1983.

[FR Doc. 83-28242
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Billing code 3195-01-M

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 14, 1983

FACT SHEET

Indian Policy Statement

SUMMARY

Strong and effective tribal governments are essential in the fight to solve the economic, health, educational, social and other problems of some 735,000 American Indians living on or near reservations. Just as the Federal government deals with States and local governments in meeting the needs of other citizens, so should the Federal government deal with tribal governments in promoting the well-being of American Indians.

The President's Indian Policy Statement emphasizes the Administration's commitment to encourage and strengthen tribal government as called for by President Nixon in 1970 and by Congress in the Indian Self-Determination and Education Assistance Act of 1975. The 1970 policy and 1975 law have not been adequately implemented because the Federal government has inhibited the political and economic development of the tribes. Excessive regulations and self-perpetuating bureaucracy have stifled tribal decisionmaking, thwarted Indian control of reservation resources, and promoted dependency rather than self-sufficiency.

This Administration will reverse this trend by removing obstacles to self-government and by creating a more favorable enviroment for development of healthy reservation economies. This policy recognizes the diversity of the tribes and the right of each to set its own priorities and goals, and to proceed at its own pace. At the same time, the Federal government will continue to fulfill its traditional responsibility for the physical and financial resources held in trust for the tribes and their members.

Indian tribes are tribal governments because they retain all aspects of their original sovereignty not otherwise given up or taken away by Congress. There are 283 Federally-recognized tribal governments in the United States. In addition, there are 193 Alaska village organizations which are served by the Bureau of Indian Affairs (BIA). According to figures released by the U.S. Census Bureau, there were 1,418,195 American Indians, Eskimos and Aleuts in the United States in 1980.

more

(OVER)

MAJOR POLICY POINTS

-- The Administration will deal with Indian tribes on a government-to-government basis.

-- Tribal governments will be strengthened through these actions:

* Today's signing of H.R. 5470, the Indian Tribal Governmental Tax Status Act. This legislation provides tribes with essentially the same treatment under Federal tax laws as applies to other governments with regard to revenue raising and saving mechanisms.

* Encouragement for tribes to assume responsibilities for sevices such as the enforcement of tribal laws, developing and managing tribal resources, providing health and social services and education.

* Designation of the White House Office of Intergovernmental Affairs as liaison for tribes. By moving this function from the White House Office of Public Liaison, the President recognizes that tribal organizations are governments rather than interest groups such as veterans, businessmen and religious leaders.

* A request that Congress expand the authorized membership of the Advisory Commission on Intergovernmental Relations to include a representative of Indian tribal governments.

* Request that Congress repudiate House Concurrent Resolution 108 of the 83rd Congress which called for termination of the Federal-tribal relationship. The Administration wants this lingering threat of termination withdrawn and replaced by a resolution expressing its support of a government-to-government relationship.

* Support for direct funding to Indian tribes under Title XX social services block grants to States. In keeping with the government-to-government relationship, Indian tribes are defined by law as eligible entities and receive direct funding, if they wish, in five block grant programs administered by the Department of Health and Human Services. These and other blocks to the States consolidated dozens of categorical Federal domestic assistance programs to reduce fragmentation and overlap, eliminate excessive Federal regulation, and provide for more local control. This Administration proposes that Indian tribes be eligible for direct funding in the Title XX social services block, the block with the largest appropriation and the greatest flexibility in service delivery.

C H A R T E R

PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES

1. The official designation of the Commission is the Presidential Commission on Indian Reservation Economies.

2. The purpose of the Commission is to advise the President on what actions should be taken to develop a stronger private sector on federally recognized Indian reservations, lessen tribal dependence on federal monies and programs and reduce the stifling federal presence in Indian affairs. The underlying principles of this mission are the government-to-government relationship, the established federal policy of self-determination and the federal trust responsibility. Other related issues, regardless of their importance, should not be allowed to dilute the Commission's efforts. The Commission will focus exclusively on the following items, and not on the new federal financial assistance:

   (a) Defining the existing federal legislative, regulatory, and procedural obstacles to the creation of positive economic environments on Indian reservations.

   (b) Identifying and recommending changes or other remedial actions necessary to remove these obstacles.

   (c) Defining the obstacles at the State, local and tribal governmental levels which impede both Indian and non-Indian private sector investments on reservations.

   (d) Identifying actions which these levels of government could take to rectify the identified problems.

   (e) Recommending ways for the private sector, both Indian and non-Indian, to participate in the development and growth of reservation economies, including capital formation.

3. The Commission should review studies undertaken in the last decade to obtain pertinent recommendations that are directly related to its mission.

4. It is expected that the Commission will complete its work no later than the last day of November, 1984.

5. The Secretary of the Interior shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the effective performance of its functions.

6. The duties of the Commission are advisory in nature in accordance with this document.

7. The estimated operating cost of the Commission is approximately $865,000, only $400,000 of which shall come from Department of Interior appropriations. The Commission's work will necessitate approximately 5 staff-years of support.

8. The Commission will meet approximately monthly at the call of the chairmen. All meetings of the Commission and all agenda must have prior approval of the chairmen. Pursuant to Section 10 (e) of the Federal Advisory Committee Act, the Commission shall obtain the advance approval for any meeting from a federal employee who has been designated to exercise the powers under Section 19(e) and (f) of such Act.

9. The Commission shall submit a final report exclusvely to the President and the Secretary of the Interior through the Cabinet Council on Human Resources.

10. Members of the Commission appointed from among non-government employees may receive compensation, travel and per diem expenses for each day such member is engaged in the work of the Commission. Travel and per diem reimbursement shall be up to a daily rate in accordance with the Federal Travel Regulations.

11. In carring out its responsibilities, the Commission is authorized to:

    (a) conduct hearings (swearing in witnesses as appropriate), interviews, and reviews at field sites, or wherever deemed necessary to fulfill its duties.

    (b) confer with Indian tribal government officials and managers, and other parties dealing with matters pertaining to the Commission's mission.

12. The co-chairman or their designee shall be the official spokespersons for the Commission for contact with the Congress, public, media, and others.

The Commission shall terminate 30 (thirty) days after it transmits its final report to the Cabinet Council on Human Resources, or on December 31, 1984, whichever occurs earlier.

(signed)
SECRETARY OF INTERIOR

Ocotber 6, 1983
Date Filed

II RECOMMENDATIONS OF THE COMMISSION

INTRODUCTION TO THE RECOMMENDATIONS

The Presidential Commission on Indian Reservation Economies proceeded upon the assumption that Indian reservation economies were an integral part of the national economy and not distinctly separate third world economies. In conducting its study on Indian reservation economies, therefore, it did not explicitly rely upon theories such as: traditional economic development theory of lesser developed countries, the Rostow linear stages model, the Harrod-Domar growth model, the Marxist neo-colonial dependence model, the false paradigm model, or even the Dualist model, as sources to explain Indian reservation underdevelopment. The Commission avoided presupposing a "model modernized society" as a standard for either approximation or comparison. Moreover, it did not believe that mail-order models or solutions, complete with their rates, routes and time-tables, would be sources for fertile recommendations. The Commission recognized that no Indian tribe or nation can simply import an Industrial Revolution from without, unpack it like a piece of machinery, and then set it in motion.

From the beginning, the Commission approached the problem of studying Indian reservation economic underdevelopment empirically and deductively. It sought to learn what the obstacles were that adversely affected competitive returns to land, labor and capital, as they were factored into an economic production function. As witness after witness testified before the Commission, certain problems began to emerge over and over again. These problems began to take shape and to develop a character of their own. There were 2,320 individual obstacle identifications, which, when grouped according to factor, function and attribution (See Methodology) emerged into 40 major obstacles.

The Presidential Commission on Indian Reservation Economies made five sets of recommendations: Development Framework, Capital Formation, Business Development, Labor Markets and Development Incentives. Within each set, one or more specific recommendations can be found. It is apparent from reading the narrative to each set of recommendations that the Commission views economic development as a multidimensional process, affecting major functional aspects of an Indian society's economy, polity, religion, community, education and family structure.

The processes of social and economic transformation necessary to make Indian reservations viable areas of economic growth will require whole-hearted commitment to change by all levels of government. The Federal-Indian relationship needs to mature beyond that of benign paternalism to that of a federalist partnership. Indian tribal governments need to exercise sovereign responsibility and to select development policies which make it possible for individual Indians to succeed in business. The recommendations which follow, however, recognize that the real motivating power of change must come from the Indian people and from their leadership. The direction and pace at which change proceeds should be determined, not by the federal government, but by the Indian people.

DEVELOPMENT FRAMEWORK: INTRODUCTION

The social and economic processes of transforming an economy encompass more than approaches to increasing per capita income, savings and investment ratios, or economic integration. An environmental framework favorable to economic development needs to be articulated. This is vital in order to break out of that process of circular and cumulative causation which sees low productivity leading to low incomes, low incomes leading to low levels of living, and low levels of living leading to low productivity.

The changes anticipated by the recommendations made in this section contemplate a new Federal-Indian relationship, no longer characterized by paternalism, but imbued with a sense of partnership between the United States and Indian tribal governments. A framework capable of supporting such a new partnership will require a reordering of the ways in which the United States and Indian tribes relate to each other, to new responsibilities, and to new challenges. A modernization of social and political arrangements is needed in order to create a basis from which social and economic self-sufficiency can be built.

There will always be resistance to constructing a social and political framework which is capable of providing incentives and opportunity, and which in parting from the old order, releases the considerable productive capabilities latent in Indian society. Economic development, without subsidy, can be successfully put together only within a new social and economic setting which entails a radical break with the past dependency on the federal government.

REPEAL HOUSE CONCURRENT RESOLUTION 108

On June 9, 1953, Representative Harrison introduced House Concurrent Resolution 108 which provided:

> That it is declared to be the sense of Congress that, at the earliest possible time, all of the Indian tribes and the individual members thereof located within the States of California, Florida, New York, and Texas, and all of the following named Indian tribes and individual members thereof, should be freed from Federal supervision and control and from all disabilities and limitations specially applicable to Indians. It is further declared to be the sense of Congress that the Secretary of the Interior should examine all existing legislation dealing with such Indians, and treaties between the Government of the United States and each such tribe, and report to Congress at the earliest practicable date, but not later than January 1, 1954, his recommendations for such legislation as, in his judgment, may be necessary to accomplish the purposes of this resolution.

Senator Watkins who presided over the hearings conducted on Resolution 108 was greatly discouraged by the past failures of federal trusteeship, commenting "I think we have been operating now in many cases over 150 years as guardians of some of these Indians, and I do not think we can point with any degree of pride to what we have accomplished."

The statement of termination policy required implementing statutory authority, which followed, terminating 109 tribes, bands, rancherias; affecting 11,466 Indian individuals and 1,362,155 acres of land. Indians who supported the Resolution and subsequent Acts did so because they desired their distributive interest of tribal assets, wished freedom from government control and regulation, wanted their property removed from trust in order to obtain mortgages, and felt that tribal ownership was socialistic or communistic.

The majority of tribes did not support House Concurrent Resolution 108 and their resistance to its statement of policy stiffened when successful tribes which had been terminated, began to suffer from its disastrous effects. H.R. Rep. NO. 604, 93d Cong., 1st Sess. 4 (1973) reported in relation to the Menominee termination plan:

> This plan brought the Menominee people to the brink of economic, social and cultural disaster. The sawmill operation, which supported the tribe and most of the Federal services prior to termination, is now only marginally successful. Menominee Enterprises, Inc., saddled with a huge corporate indebtedness, a difficult management scheme, and high county and state taxation, is on the verge of bankruptcy.

Following upon the termination acts and the long delays at implementation were a plethora of law suits to clarify the meaning of termination. The failure of Congress to repudiate House Concurrent Resolution 108 continued to instill fear in Indian tribes, in spite of President Nixon's message on "Self-Determination Without Threat of Termination," and passage of the Indian Self-Determination and Education and Assistance Act.

The Reagan Administration realized that fear of termination was crippling Indian initiative. Tribes feared success where success spelled termination. In his January 24, 1983 American Indian Policy statement, the President said:

> In addition, this Administration calls upon Congress to replace House Concurrent Resolution 108 of the 83rd Congress, the resolution which established the now discredited policy of terminating the federal-tribal relationship. Congress has implicitly rejected the termination policy by enacting the Indian Self-Determination and Education Assistance Act of 1975. However, because the termination policy declared in H. Con. Res. 108 has not been expressly and formally repudiated by a concurrent resolution of Congress, it continues to create among Indian people an apprehension that the United States may not in the future honor the unique relationship between the Indian people and the federal government. A lingering threat of termination has no place in this Administration's policy of self-government for Indian tribes, and I ask Congress to again express its support of self-government.

In creating the Presidential Commission on Indian Reservation Economies, the President acknowledged the long standing problem of federal administration of Indian affairs, noting that the federal government itself was a major obstacle to Indian economic advancement.

In order to assure Indian tribes that the penalty of success is not termination, the Reagan Administration has affirmed the Federal-Indian relationship. Repudiation by Congress of Resolution 108 would encourage tribes to take the risks and make the decisions they need to make in order to build their local economies, achieve autonomy, and minimize their dependence on the federal government. Repudiation is an assurance that they can undertake the process of modernizing their government, privatizing business, and actually working their way free of federal dependence secure in the knowledge that support will be there when and if they fail.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS:

THAT THE CONGRESS OF THE UNITED STATES ACT TO REPEAL HOUSE CONCURRENT RESOLUTION 108.

MODERNIZATION OF TRIBAL GOVERNMENTS

Indian tribal governments are possessed of limited attributes of sovereignty and have been accorded political and governmental recognition by all branches of the United States government. There are 227 officially approved Indian organizations pursuant to federal statutory authority under the Indian Reorganization Act, Oklahoma Indian Welfare Act and the Alaska Native Act. In addition to these, there are 56 Indian organizations which have not been established pursuant to any specific statutory authority but which have been officially approved by the Bureau of Indian Affairs. A third category of traditional Indian organizations also exists, which have organized and been recognized, although the Bureau of Indian Affairs has not formally approved of their organizational structure. There are 204 Indian organizations in this category. In sum, 487 Indian organizational entities are recognized by the Bureau of Indian Affairs. Of this number only 135 Indian organizations have been established under the Indian Reorganization Act.

The social and economic characteristics among the 487 Indian tribal governments vary widely, making the notion of model constitutions troublesome. In general, there are more non-Indians living within the borders of Indian reservations than there are Indian residents. Approximately 35% of all Indian reservations and Alaskan villages have fewer than 100 resident members. Less than 15% of all Indian reservations have 2,000 or more members. The high degree of social and economic integration within tribal borders imposes burdens on tribal government functioning. Land and resource ownership characteristics also vary widely. Of the $175 million dollars in royalties, rents and bonuses from mineral leases on Indian lands, the majority went to Council of Energy Resource Tribes which constitute fewer than 10% of the nation's Indian organizations. In addition, the distribution of grazing lands, farm lands, irrigable lands, timber lands, fisheries and water resources are such that wealth is not evenly distributed among the Indian organizations.

In order to deal more effectively with the demands which de facto social and economic integration impose on tribal governments and in consideration of the substantial differences among Indian reservations and their tribal governments, Indian tribes need to modernize their systems of governance.

Generally speaking, Indian tribal governments are hindered in their pursuit of economic and business development by their antiquated or inappropriate political structures. Moreover, their failure to adhere to a constitutional principle separating executive, legislative and judicial powers has had a detrimental effect on governmental functioning. For example, the failure to establish a clear separation of powers between the tribal council and the tribal judiciary has resulted in political interference with tribal courts, weakening their independence, and raising doubts about fairness and the rule of law. Similarly, the penchant of tribal councils to operate by "resolution" rather than by "ordinance" has the effect of politicizing executive administration, particularly where the chairman-executive is also an elected member of the council. The overlap in authorities undermines stable functioning of tribal government.

The confusion of tribal powers extends to a confusion of governmental and corporate functions as well. Businesses have different goals from governments. The failure to separate governmental from corporate functions results in a confusion of goals. Using tribal enterprises as instruments of political patronage

contributes to their failure. Siphoning away investment capital from tribal businesses weakens the capacity of business to expand. A major cause of tribal business failure lies in the confusion over governmental and corporate roles.

In order to minimize risks attendant to tribal government instability and to promote due process of law for those who live and do business within an Indian reservation, the rule of law also needs to be strengthened on Indian reservations. Consistent with the government-to-government relationship and principles of federalism, tribal judicial systems should be accorded the same legal status as that accorded to state judicial systems insofar as appellate review to the federal court system is made available. Accordingly, those tribal court decisions which involve statutory or constitutional rights, like those of the respective states, should be appealable to the federal courts. Such an appellate review system would strengthen tribal court systems, enhance guarantees of fairness, and promote greater certainty for business activity. The status of tribal judiciaries would be enhanced and opportunities for comity of judgments would be improved between tribal and state court systems.

Indian reservations vary widely in their social and economic demography, their degree of social and economic integration, their patterns of land and resource ownership, and the appropriateness of their political structures. In approaching the modernization of tribal governments, the great diversity among Indian tribes and their reservations needs to be considered.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBAL GOVERNMENTS UNDERTAKE A PROCESS OF MODERNIZING THEIR CONSTITUTIONS TO ACHIEVE AN EFFECTIVE SEPARATION OF GOVERNMENTAL POWERS IN WHICH THE TRIBAL JUDICIAL SYSTEM CAN OPERATE WITHOUT POLITICAL INTERFERENCE FROM TRIBAL GOVERNMENT; AND IN WHICH THERE IS AN EFFECTIVE SEPARATION BETWEEN THE TRIBAL EXECUTIVE AND LEGISLATIVE BRANCHES OF GOVERNMENT.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBAL GOVERNMENTS UNDERTAKE A PROCESS OF SEPARATING THEIR CORPORATE BUSINESS FUNCTIONS FROM POLITICAL OR MANAGEMENT INTERFERENCE BY TRIBAL GOVERNMENTS.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT LEGISLATION BE PROVIDED FOR APPELLATE REVIEW OF TRIBAL COURT DECISIONS TO THE FEDERAL COURT SYSTEM WHERE CONSTITUTIONAL OR STATUTORY RIGHTS ARE INVOLVED.

REORGANIZATION OF GOVERNMENT SUPPORT SYSTEMS

Bureau of Indian Affairs management of Indian trust resources creates numerous land, labor, and capital obstacles to Indian reservation economic development. In terms of land and resources, incompetent asset management undermines local initiative and raises costs to Indian tribes and businesses. In terms of labor, Bureau personnel are either under-qualified to manage their present responsibilities, or unable to provide expert technical assistance for business development. Moreover, education and training programs are so overcontrolled by the Bureau, that local control of Indian programs and schools is more rhetorical than factual. Training programs are not focused on private sector labor markets. They are generally not cost effective in terms of employment, and the training and counseling bureaucracy consumes more funds on itself than it contracts directly to tribes. In terms of capital, the Bureau's organizational structure, functioning, and operational deficiencies are such that the cost of doing business on Indian reservations is raised considerably when Indian business development is required to involve the BIA. Furthermore, business development is frequently deterred by BIA where its bureaucratic processes are required for approvals. Excessive regulation has compliance and control for its goals. A Byzantine system of overregulation actually deters investment by raising costs, creating uncertainty, and undermining local initiative. Exacerbating the development climate, is the fact that BIA consumes more than two-thirds of its budget on itself, contracting only 27% of its programs to Indian tribes; leaving very little for investment purposes. Inadequate federal funding exists as an identified obstacle to Indian economic development because the system of delivering support to Indian tribes and Native groups is not designed to provide them with the kind of support they need. The system is designed for paternalistic control and it thrives on the failure of Indian tribes.

A reorganization of government systems which focuses on trust responsibility from the perspective of protection, rather than management, which provides a population-resource formula for block grants to tribes, and which acknowledges their rights to manage their own affairs, would provide the right kind of support. The last ten years of Bureau failure at Indian Self-Determination and Education Assistance Act contracting cannot be overcome by entrusting to the Bureau's bureaucracy, the responsibility of reforming itself. Bureau control over budget reallocations and the contract terms of P.L. 93-638 contracting has led to continued domination of tribal social and economic development. Such a governmental reorganization should also provide for continued government operation of programs and basic services where tribes do not wish to participate in block grants or in enhanced P.L. 93-638 contracting efforts.

Legislation creating a new federal agency for supporting Indian tribes and maintaining the federal trust responsibility should also possess the appropriate legal authorities for accessing resource information developed and maintained by other agencies within the federal government. The Bureau of Land Management and the Minerals Management Service are agencies whose authorities should be evaluated for possible transfer of land surveying and resource recordkeeping functions related to federal-Indian lands. A federal agency which provides financial support and trust protection services would reduce the federal presence in Indian affairs. It also would result in the transfer of most appropriated funds directly to tribes and Native groups, and would provide a protective umbrella for tribal government, by making accountability possible through local autonomy.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT IN THE SPIRIT OF INDIAN SELF-DETERMINATION WHICH SEEKS TO STRENGTHEN TRIBAL AUTONOMY, AUTHORITY, AND ACCOUNTABILITY, AND SIMULTANEOUSLY PROTECT INDIAN TRUST RESOURCES AGAINST TERMINATION:

1) LEGISLATION CREATING AN INDIAN TRUST SERVICES ADMINISTRATION WHOSE FUNCTION IS PROTECTION OF INDIAN RESOURCES, RATHER THAN MANAGEMENT OF INDIAN RESOURCES, AND WHICH SHALL:

   A) ADMINISTER A LEGISLATIVELY CREATED FORMULA BLOCK GRANT FOR TRIBES WHICH, ON A VOLUNTARY BASIS, CHOOSE TO PARTICIPATE;

   B) ADMINISTER AN ENHANCED PROGRAM OF INDIAN SELF-DETERMINATION AND EDUCATIONAL ASSISTANCE ACT CONTRACT AND GRANT PROGRAMS, FOR TRIBES WHICH CHOOSE NOT TO PARTICIPATE IN A VOLUNTARY FORMULA BLOCK GRANT;

   C) ADMINISTER FEDERAL PROPERTY TRANSFERS IN SUPPORT OF LOCAL SELF-DETERMINATION INITIATIVES

   D) ADMINISTER A PROGRAM OF ENHANCED TRUST RESPONSIBILITY SERVICES FOR ALL TRIBES, IRRESPECTIVE OF WHETHER THEY PARTICIPATE IN FORMULA BLOCK GRANTS OR ENHANCED CONTRACTING OR GRANT ACTIVITY.

2) THAT THE OVERALL APPROPRIATIONS LEVEL FOR INDIANS NOT BE REDUCED BELOW FISCAL YEAR 1986 LEVELS.

THE PRESIDENTIAL COMMISSION ON INDIAN RESEVATION ECONOMIES RECOMMENDS

THAT INDIAN TRIBES WHICH CHOOSE NOT TO CONTRACT OR PARTICIPATE IN A VOLUNTARY FORMULA BLOCK GRANT PROGRAM, BE PROVIDED WITH CONTINUING PROGRAM SERVICES FROM OTHER APPROPRIATE AGENCIES, WITH THE EXCEPTION OF TRUST SERVICES WHICH SHALL BE PERFORMED BY THE INDIAN TRUST SERVICES ADMINISTRATION.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT LEGISLATION CREATING AN INDIAN TRUST SERVICES ADMINISTRATION PROVIDE FOR THOSE AUTHORITIES OF THE BUREAU OF LAND MANAGEMENT AND MINERALS MANAGEMENT SERVICE WHICH ARE NECESSARY TO CONDUCT LAND SURVEYS AND RESOURCE RECORD KEEPING ON MINERAL AND ENERGY RESOURCE PRODUCTION AND ROYALTIES ON FEDERAL-INDIAN LANDS.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT IN THE INTERIM TO THE CREATION OF AN INDIAN TRUST SERVICES ADMINISTRATION, THE BUREAU OF INDIAN AFFAIRS BE DIRECTED TO EXERCISE ITS TRUST RESPONSIBILITY IN A MANNER CONDUCIVE TO SUPPORTING TRIBAL RESOURCES DEVELOPMENT AND MARKETING, BY EXERCISING ITS AUTHORITIES IN SUPPORT AND IN CONCERT WITH LOCAL EFFORTS AND PRIVATE INITIATIVE.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE SECRETARY OF THE INTERIOR CONSIDER THE MANY PROBLEMS IDENTIFIED BY NATIVE PEOPLE WHICH HAVE DELAYED IMPLEMENTATION OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT; IMPEDED OPPORTUNITIES FOR RESOURCE DEVELOPMENT; CREATED CONFLICTS AMONG STATE AND LOCAL GOVERNMENT, NATIVE CORPORATIONS, AND FEDERAL AGENCIES; AND FRUSTRATED THE EXPECTATIONS OF NATIVE PEOPLE, AS THE DEPARTMENT OF THE INTERIOR MOVES TO RESOLVE IMPLEMENTATION PROBLEMS CREATED BY THE DELAY.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE SECRETARY OF THE INTERIOR CONVENE A SUMMIT CONFERENCE ON WATER RESOURCES FROM AMONG STATE, LOCAL, AND TRIBAL GOVERNMENTS, FOR THE PURPOSE OF ESTABLISHING A MEDIATIVE PROCESS FOR DEALING WITH WATER RIGHTS AND FOR EXPLORING INNOVATIVE APPROACHES TO WATER RESOURCES MARKETING AND WATER RESOURCE DEVELOPMENT.

COORDINATION OF GOVERNMENT SUPPORT SYSTEMS

Approximately twenty programs in many different federal departments and agencies provide various forms of business development assistance to Indian reservations. Unfortunately, different program goals, policies, regulations, procedures, reporting requirements and funding or lending cycles make coordinated use by tribes of these federal resources virtually impossible. Additionally, federal personnel are not in the business of assessing the needs of business. Compliance rather than profitability has been the criterion of success for federally funded projects. Because federal agencies do not coordinate, overlap and fragmentation occur further minimizing the effectiveness of the overall federal effort. Moreover, past efforts at coordination have failed largely because of "turf" conflicts inherent to the federal program system.

Simplified, uniform application procedures for loans and grants with several coordination points could partially address this problem. Also, contract and grant regulations which provide for common administrative cost centers would make more funds available to support business. Common data bases, terminology and definitions would permit more cost effective decision making, and targeting of resources. Agencies should be encouraged to pool funds, particularly technical assistance resources. This could be done by a National Commission on Indian Business Development; additionally, this Commission could also oversee policy implementation and consistency. The Indian Trust Services Administration, as the federal government's primary Indian service agency, would be the logical clearance point for forms and application procedures. Private business organizations could be retained to evaluate how well specific programs address the needs of business development, as well as performing business technical assistance to Indian enterprises.

A major conclusion of the Presidential Commission on Indian Reservation Economies is that the bureaucracy cannot be trusted to reform itself without some kind of instrumentality to track and oversee the change. History abounds with recommendations made by past commissions which only gather dust in libraries. There are also many examples of past public policies becoming institutionalized within the federal government, each with its funded constituency, each with a categorical solution, and each contributing to a distortion of economic reality.

A tracking and monitoring instrumentality, such as a National Commission on Indian Business Development, could oversee the implementation of those PCIRE recommendations accepted by the President and maintain a focus on the bottom line by supporting the creation of a vigorous private sector on Indian reservations and by providing an ongoing and dynamic process for advising on corrective actions. It would seek results rather than the creation of more compartmentalized programs and bureaucracies. Without such oversight, it can only be expected that the bureaucracies will "take corrective action" and "declare victory." Reform would be cosmetic, rhetorical and superficial without White House commitment and systematic follow through. An instrumentality created by Executive Order could oversee specific changes in how the government presently functions with regard to Indian related programs and services. The Commission believes that acting on the recommendations suggested will provide a clear signal to the Indian people that the Administration is seriously pursuing the President's 1983 policy statement on Indian Affairs and of his continuing commitment to providing them with the right kind of assistance.

The recommendations made by the Commission are designed to act positively upon the major obstacles to Indian economic development identified during the work of the Commission. The instrumentality would provide a body to monitor change within government, to enhance federal procurement contracting, to increase Indian Self-Determination Act contracting, and to coordinate the provision of technical assistance services by focusing them on business development.

The National Commission on Indian Business Development should be located within the Executive Office of the President given the many departments which are involved with Indian programs and services. Membership should consist of the Vice President, as Chairman, the Secretaries of Interior, Commerce, Labor and the Attorney General, six Indian leaders and six business leaders. Bipartisan membership from both Houses of Congress should also be considered. The major functions of the Commission should include the following:

a) Track and monitor the implementation and the effects of the recommendations made by the Presidential Commission on Indian Reservation Economies;

b) Prepare a yearly report to the President on the State of the Indian nations;

c) Monitor federal interagency coordination and cooperation in carrying out federal programs, and in collecting pertinent data, relating to Indians;

d) Assure access by Indian enterprises to the federal procurement system, accelerated "638" contracting, and greater use of block grants to Indian tribes;

e) Arrange through federal agencies or otherwise, business and private sector expert assistance to Indian business enterprises, and public administration and management oriented assistance to Indian tribal organizations. Such assistance to include the following:

1) Feasibility studies and pre-investment assistance;
2) Brokering and match-making services;
3) Management training and related assistance;
4) Technology access and transfer;
5) Access to financial and capital markets;
6) Marketing and sales assistance; and
7) Procurement and contracting assistance.

An improved coordination, and improved quality, will be sought for the more than $2.6 billion of programs and services appropriated annually for Indian programs, and for programs and services which benefit individual Indians. There are nearly twenty programs in a host of departments and agencies which have the goal of providing business and other development assistance to Indian reservations. Many of these programs have a high degree of overlap and fragmentation.

The structure of federal programming, left uncoordinated, is such that its categorical nature makes it difficult for program recipients to succeed. Conflicting program goals, policies, regulations, procedures, reporting and accounting requirements, and funding or lending cycles make it difficult for Indian tribes to succeed at program coordination when the federal government itself is so uncoordinated.

Program directors see compliance, not profitable activity, as the determinant of a successful project. Federal bureaucrats are not fully competent at assessing the needs of business. Expert technical assistance provided or funded by the federal government, rather than being business oriented, tends to focus on how to write successful applications for grant programs, how to comply with grant programs, how to write measurable objectives and report on program success to government bureaucrats, and how to train staff in program operations. Most federal programming is focused more on social, educational, health and welfare needs of Indian individuals than on business development on Indian reservations.

Another compounding factor is that there is no central data bank where one can obtain government-wide information about Indian population, resources, budgets, or economic activities. There are information gaps. Other data are diffused throughout many agencies, which do not share information in a consistent manner. There is a lack of clarity in data collected. The result is that the data base is too weak to permit effective and timely analysis.

These weaknesses of excessive program compliance requirements and inadequate and weak data bases impose burdensome costs on Indian economic activity. The plethora of guidelines, layers of approvals, workshops on compliance, overlapping and inconsistant regulations and multiple record keeping may meet the needs of government and of the bureaucrats, but not of business.

The proposed National Commission on Indian Business Development would provide a mechanism to track and monitor progress, to identify problems, to assess the reasons for major shortfalls, and to lay out new or revised solutions and recommendations for appropriate actions by the executive agencies, by Congress, by tribal organizations, or by the business community. This instrumentality would strive to create a healthy private sector on Indian reservations, shift responsibility and block grants from the federal to the local tribal level, and provide greater responsibility and authority to Indian tribes over their own resources without impairing the trust status. It would also create more jobs through greater participation by Indian enterprises in government procurement, create more jobs through accelerated Self-Determination Act contracting, decrease the need for social welfare dependency and transfer payments, decrease bureaucratic overhead, decrease the need for future federal program outlays due to greater effectiveness and efficiency in the use of funds, and increase federal income taxes from employed Indians and from successful Indian business enterprises. Establishing a National Commission on Indian Business Development would create a voice for "profitability" where there had only been demands for social welfare services.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE PRESIDENT CREATE A NATIONAL COMMISSION ON INDIAN BUSINESS DEVELOPMENT, BY EXECUTIVE ORDER, TO PROMOTE THE DEVELOPMENT OF AN INDEPENDENT AND HEALTHY PRIVATE SECTOR ON INDIAN RESERVATIONS BY OVERSEEING THE ADHERENCE TO RECOMMENDATIONS ADOPTED BY THE PRESIDENT FROM HIS COMMISSION ON INDIAN RESERVATION ECONOMIES, AND BY COORDINATING FEDERAL AGENCY ACTIVITY TOWARD THIS END; THE MEMBERSHIP OF WHICH SHALL BE DRAWN FROM AMONG INDIAN TRIBES, BUSINESS, AND GOVERNMENT; AND WHICH SHALL BE CHAIRED BY THE VICE-PRESIDENT OF THE UNITED STATES.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT FEDERAL AGENCIES COORDINATE ON WAYS IN WHICH TO SIMPLIFY AND MAKE UNIFORM APPLICATION PROCEDURES FOR LOANS AND GRANTS, AND THAT THE INDIAN TRUST SERVICES ADMINISTRATION BE INCLUDED IN THE FORMS CLEARANCE PROCESS.

RATIONALIZATION OF INTERGOVERNMENTAL AUTHORITY

Concurrent legislative jurisdiction by state and local governments, with tribal governments, over non-Indian residents of Indian reservations, and over economic activity on reservations involving non-Indians, have produced significant litigation and jurisdictional conflicts. Disputes of this kind constitute a major source of obstacles to Indian reservation economic development. When businesses believe that there will be dual taxation if they locate on Indian reservations and do business there, they tend to locate along the outside border of a reservation. In spite of White Mountain Apache Tribe v. Bracker, 448 U.S. 160 (1980), denying the state's right to tax a non-Indian business entity doing business with an Indian tribe, there is still widespread ambiguity over the extent to which state taxing power may reach.

In order to minimize the adverse effects of dual taxation on economic activity and to avoid discouraging a partnership among non-Indians and Indians, legal persons residing or doing business within the boundaries of a reservation should not incur the burdens of supporting two sovereigns. Indians and non-Indians, at the discretion of a tribal referendum, should be able to accept the exclusive taxing authority and jurisdiction of an Indian tribe, to the extent that state authority may not also apply. Such acceptance of exclusive tribal taxing authority would also create a responsibility on the part of the tribe to provide necessary public services to all residents within its boundaries.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT LEGISLATION BE INTRODUCED WHICH PERMITS INDIAN TRIBES TO HOLD REFERENDA IN WHICH ALL THE FRANCHISED VOTERS RESIDING WITHIN THE EXTERIOR BOUNDARIES OF A FEDERAL-INDIAN RESERVATION, MAY BY MAJORITY VOTE, ACCEPT THE EXERCISE OF EXCLUSIVE TRIBAL GOVERNMENT TAXATION AUTHORITY AND RESPONSIBILITY FOR THE PROVISION OF PUBLIC SERVICES TO ALL PEOPLE; THE EFFECT OF WHICH REFERENDA SHALL BE TO PREEMPT STATE TAXING JURISDICTION; AND THAT SUCH LEGISLATION NOT LIMIT THE POWER OF TRIBES TO ENTER INTO LOCAL SERVICE AGREEMENTS WITH OTHER UNITS OF STATE OR LOCAL GOVERNMENT.

CAPITAL FORMATION - INTRODUCTION

One of the major obstacles to Indian economic development is "access" to sources of capital by Indian individuals, Indian businesses and Indian tribes. The problem is one of getting capital to the right places. Risk aversion, however, influences the degree of that access. In determining risk, financial institutions must take a number of factors affecting rate of return on investment into account. Unfortunately, there are additional factors raising risk to investment on Indian reservations which are not found off of reservations. Major factors which raise risk or impose additional costs are:

- Trust status of Indian surface and subsurface resources
- Federal regulation and management of those resources
- Public sector management of business activity by Tribes
- State, local, tribal government concurrent regulation

The fact that Indian lands and resources are held in trust by the federal government means that they cannot be flexibly used as collateral for loans from financial institutions which require suitable security. Federal regulation and management of Indian lands and resources, primarily by the Bureau of Indian Affairs, imposes a complex framework of regulatory controls over resource decision making and resource use. These controls exist in treaties, executive orders and statutes and govern specific resources, such as: land, minerals, timber, water, fishing, etc. Since tribes are the major land and resource owners on Indian reservations, they are intimately involved in promoting business development activity. The problem is that the goals of tribal government are different from businesses. Many tribal governments decapitalize their businesses by redirecting retained earnings toward support of tribal government rather than toward business expansion. Tribal governments often compete with individual Indians or Indian businesses rather than providing an environment conducive to their success. State and local governments frequently impose additional regulation and taxation of business activity on Indian reservations, in excess of the public services which they provide.

The Indian reservation environment is regulated and managed by the federal government; it is also regulated, managed, and taxed by state, local and tribal governments. The heavy degree of governmental involvement in business activity, whether it involves trust assets or not, creates an environment hostile to private sector development. The traditional response of the federal government has been to provide capital grant and loan guarantee programs because tribes have had difficulty in accessing private sector capital markets where weak security or additional costs increase risk. While federal capital programs may have provided a substitute capital market to alleviate the security problems which trust status creates, nothing has been done to alleviate the costs which excessive federal, state, local and tribal governments impose.

The recommendations made by the President's Commission on Indian Reservation Economies seek to improve individual Indian, Indian business and Indian tribal access to capital. The recommendations also seek to improve the climate for investment. In deliberating on what recommendations the Commission should make to the President, it considered the degree to which federal trust responsibility operated as an obstacle to Indian reservation economic development.

The trust responsibility of the federal government for Indian lands and resources, presents a difficult dilemma. On the one hand, trust responsibility seeks to protect Indian lands and resources from alienation, regulation, or taxation by states and local governments. The consequences of such protection however, make it difficult to obtain capital because resources held in trust are not subject to foreclosure, and therefore constitute weak security. The unintended consequence is an impairment of the economic development process.

Preservation of the trust relationship is, however, the most important test by which Indian tribes measure Federal-Indian policy. Centuries of dishonor by the United States in fulfilling its duty of care and protection, as set forth in practically every Treaty, have instilled a fear in Indian tribes that is rational, to the extent that there have been historical takings of Indian lands, and irrational, to the extent that such a relationship does impair access to capital resources, thereby impeding efforts toward self-sufficiency.

The President's 1983 American Indian Affairs Policy Statement seeks to uphold the trust relationship. Consistent with the President's policy, his Commission on Indian Reservation Economies has considered numerous alternatives to improving the opportunities for capital formation, consistent with continued maintenance of the federal trust responsibility.

PRIVATE OWNERSHIP OF TRIBAL ENTERPRISES

In the United States, the private sector accounts for about 88% of the gross national product. Private sector capital is the basis for the production of goods and services and is indispensable to economic growth. It is the engine which supports public sector services. A free enterprise system is characterized by private ownership of the means of production and all other kinds of property, and by considerable individual freedom in pursuing economic activities for the sake of personal profit. Private property, individual freedom and the profit motive are basic attributes of the national economic system. By contrast, Indian reservations are characterized by government-run tribal businesses, utilizing tribally held property, and operated in many instances in a not-for-profit manner. In all capitalist systems, governments do play an economic role, but not to the same extent as tribal governments.

Private enterprise includes all economic activities that are independent of government control, or outside of the so-called public sector, that are carried on principally for profit. Also included are those nonprofit organizations which are directed at satisfying private needs, such as private hospitals and private schools. Private enterprise is owned individually, or by groups, as well as the self-employed.

The Private Sector Survey on Opportunities and Constraints, commissioned by the President's Commission on Indian Reservation Economies found that extensive tribal government management and involvement in business development activity contributed to the failure of tribal enterprises. Merely separating the corporate functions of tribal enterprises from interference by tribal government and employing competent management will not achieve a privatization of tribal enterprises capable of offering profit motivation, private property ownership, nor individual freedom.

Private ownership of tribal enterprises contemplates ownership of the means of production, private management, for-profit motivation and freedom for individual Indians or groups of Indians who have or share an interest in participating in business activity on an Indian reservation. Tribes could just as easily lease tribally held assets to their members as they presently do to nonmember businesses which use their resources. Existing businesses could be sold to tribal members, or ownership transferred by way of stock transfers, rather than per capita distributions of corporate retained earnings. Employee stock participation plans could also be offered. There is no one correct approach to privatizing tribal enterprises. There are, however, many possibilities for offering individual Indians incentives. There is no difference between a per capita payment from a tribal enterprise, a judgment fund, a mineral royalty or bonus, and a welfare distribution, where no opportunitiy exists for individual Indians to self-actualize or to succeed through individual effort.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT INDIAN TRIBAL GOVERNMENTS MAKE PRIVATE OWNERSHIP OR PRIVATE MANAGEMENT OF TRIBAL ENTERPRISES AN OBJECTIVE OF THEIR INVOLVEMENT IN BUSINESS ACTIVITY.

SECURITIES REGULATION

The Securities and Exchange Commission is an independent federal regulatory agency created by the Securities Exchange Act of 1934. It administers statutes designed to provide the fullest possible disclosure to the investing public and to protect the interest of both the general public and investors against malpractice in the securities and financial markets. The SEC supervises all national securites exchanges and associations, registers all issues of securities offered in interstate commerce or through the mails, registers brokers and dealers who engage in over-the-counter trading, and regulates mutual funds and other investment companies, investment counselors and advisers, and practically all other individuals and firms engaged in the investment business. The SEC enforces a number of federal laws: the Securities Act of 1933, Public Utility Holding Company Act of 1935, Trust Indenture Act of 1939, Investment Advisers Act of 1940, Investment Company Act of 1940, and the Securities Act Amendments of 1975.

Securities and Exchange Commission statutes and regulations presently exempt states and local governments from registration under the 1934 Securities Act, thereby reducing, significantly, their costs in issuing securities and financing economic development. Since tribal governments are not specifically identified in the statute providing for exemption, Indian tribes will potentially incur higher costs for securities which they issue in private capital markets. Consistent with the President's policy statement recognizing Indian tribes as tribal governments, Indian tribes should be accorded the same treatment as that provided to states and local governments.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT SECTION 3(a)(2) OF THE SECURITIES ACT OF 1933 BE AMENDED TO EXEMPT FEDERALLY RECOGNIZED INDIAN TRIBES FROM SECURITIES AND EXCHANGE COMMISSION REQUIREMENTS TO THE SAME EXTENT THAT STATE AND LOCAL GOVERNMENTS ARE EXEMPT.

INDIAN TAX STATUS

Under the provisions of the Indian Tribal Governmental Tax Status Act of 1982, Indian tribal governments are accorded the same treatment as states or local political subdivisions of states, for purposes of certain sections of the Internal Revenue Code. The Tax Status Act accords tax-exempt treatment status to revenue bonds issued by Indian tribal governments, which are used to support basic infrastructure or community development construction. Industrial revenue bonds which are used to finance business development are not accorded the same treatment.

Industrial development bonds are tax-exempt bonds issued by local governments to attract industrial enterprises. The bond is for a plant nominally owned by the municipal government, but actually secured by the long-term lease of a firm that negotiates with the local government. The business, therefore, has the advantage of lower-cost borrowing on a tax-free bond, and the municipality gets a new industry. Manufacturers also use industrial revenue bonds for pollution control projects.

Industrial revenue bonds which can be used to help finance new businesses on reservations and encourage the development of local reservation industries are not now accorded tax-exempt status by the Internal Revenue Code. Although it is generally recognized that Indian tribes should be accorded similar status to that of states and local governments, the lack of federal exemption for interest paid on industrial revenue bonds places them in an inferior status. President Reagan's 1983 Indian Affairs Policy Statement seeks to treat Indian tribes as governments.

The ability to access pre-existing capital markets through industrial revenue bonds by offering tax-exempt status to interest paid on such bonds would provide tribes with an important means of attracting profitable business expansions and significantly enhance the potential for expanding local business activity.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE INDIAN TAX STATUS ACT BE AMENDED TO PROVIDE INDIAN TRIBAL GOVERNMENTS WITH THE SAME TAX EXEMPTIONS AS THAT PROVIDED TO STATE AND LOCAL GOVERNMENTS.

TRUST FUND INVESTMENT

Price Waterhouse reported that in assessing overall performance of Bureau of Indian Affairs trust fund investment :

> We have found that the BIA Branch of Investments has achieved excellent investment results relative to other managed portfolios operating under similar investment authorizations. These recent successes are primarily attributable to a strategy of investing in short-term assets in the face of volatile interest rates and to the discovery of federal subsidies implicit in the pricing of FDIC and FSLIC insured CD's.

The report also noted a number of trust fund system deficiencies. For example, "...systems supporting BIA's accounting requirements are not designed to support its cash management information requirements, nor would it be practical to modify those systems to provide the data required to enhance the Bureau's cash management function." Cash management and accounting and control system weaknesses were identified as major problems. Adding its own emphasis the report stated: "Thus, there are significant opportunities for BIA to utilize external services."

The present system of trust fund management effectively denies tribes the right to determine their own investment objectives, to choose between investing in a short-term highly liquid portfolio, or in a medium-term wealth maximization portfolio. It also fails to account properly for invested funds.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE BUREAU OF INDIAN AFFAIRS WITH TRIBAL CONCURRENCE, CONTRACT AS MANY OF THE TRUST FUND'S OPERATIONAL AND MANAGEMENT FUNCTIONS AS POSSIBLE, TO PRIVATE FUND MANAGERS, SUBJECT TO FEDERAL LAWS PROTECTING TRUST FUND ASSETS AND INCOME, AND REALIGN THOSE FUNCTIONS NOT CONTRACTED, INTO A MORE EFFICIENT AND EFFECTIVE ORGANIZATION;

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBES ALSO BE OFFERED THE FREEDOM TO CHOOSE BETWEEN INVESTING THEIR FUNDS IN A PRIVATELY CONTRACTED INVESTMENT FUND, OR IN LOCAL FINANCIAL INSTITUTIONS, SUBJECT TO FEDERAL LAWS PROTECTING TRUST FUND ASSETS AND INCOME.

INDIAN VENTURE CAPITAL FUND

Money invested in a new company that shows a potential for fast growth is venture capital. Venture capital investment is characterized by high risk. It doesn't matter how the investment is structured, whether it is an equity investment that generates long-term capital gains, or a high risk loan that gives the venture capitalist a 25% return on his investment. Venture capital differs from finance company capital, which is also higher risk, to the extent that it offers management assistance. Venture capitalists are more involved in the management of businesses than are finance companies. In essence, the venture capitalist is a business partner. As a part of the venture, you get not only capital, but also brain power. Many of the early venture capital funds focused on finding small businesses and helping them to build from the ground up. Rather than pumping up small businesses with large infusions of capital, and then selling out their interests for a quick capital gain, early venture capital funds stayed with the businesses they sought to build.

The Bureau of Indian Affairs' present approach to providing venture capital exists in its Economic Development Initiative which promises 25% equity for business development projects which secure 75% from private sources. The program initiative suffers from government involvement, lack of government expertise in business, weak financial analysis, weak business management assistance, and its focus on tribal government-run businesses, rather than on individual Indian or privatized enterprises.

THE PRESIDENT'S COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT AN INDEPENDENT INDIAN VENTURE CAPITAL FUND(S) BE CREATED WHICH CAN PROVIDE LOANS AND TAKE EQUITY POSITIONS IN PARTNERSHIP WITH INDIAN BUSINESSES, AND WHICH IS CAPITALIZED THROUGH PRIVATE SECTOR SUBSCRIPTIONS, MATCHED ON A LIMITED BASIS BY FUNDS PREVIOUSLY USED TO SUPPORT THE BUREAU OF INDIAN AFFAIRS' ECONOMIC DEVELOPMENT ACTIVITIES.

INDIAN FINANCE ACT

There are many deficiencies in the operation and implementation of the Indian Finance Act. Management and technical assistance as provided for in the Act were not being adequately furnished by the Bureau of Indian Affairs. It was noted in the field hearings held by the Commission that the Bureau of Indian Affairs showed consistent inconsistency in interpreting guidelines and policies. Indian Finance Act operations were characterized by a notoriously poor turnaround time for applications received, a lack of knowledgeable reviewers, a lack of specialized staff, a failure to differentiate first-time borrowers from successful borrowers, and failure to apply profitability criteria to its lending activities.

There is a reluctance throughout the commercial banking industry to deal with Indian reservations because of the unresponsiveness of the BIA with regard to lending guarantees. For example, the regulation and time delays in obtaining BIA guarantees are such that fishing loans for herring season in May are made in August and fishing loans for salmon season in July are made in September.

In addition to these deficiencies, the Bureau of Indian Affairs has used appropriations intended for loans to pay for its own administrative overhead, carrying an overhead far in excess of what a privately-owned financial institution of similar size and portfolio would have.

The deficiencies identified are such that the Commission lacks confidence that the Bureau of Indian Affairs is capable of taking corrective or remedial action, and believes that the only effective course of action is to decentralize Indian Finance Act functions. Permitting financial institutions to make judgments about the profitability of loans recognizes the expertise of the financial community, rather than permitting a government bureaucracy to make judgments where it is uniquely unqualified and employs unrealistic methods of analysis.

THE PRESIDENT'S COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE INDIAN FINANCE ACT BE APPROPRIATELY AMENDED SO THAT PRIVATE FINANCIAL INSTITUTIONS BE PERMITTED TO CONTRACT FOR ADMINISTRATIVE FUNCTIONS AS WELL AS MAKE LOANS, UTILIZE GUARANTEES, ETC., SUBJECT TO ANNUAL APPROPRIATIONS, REVOLVING FUND LIMITATIONS, AND FUND MANAGEMENT BY THE TREASURY DEPARTMENT.

INDIAN LOAN GUARANTY FUND

The Indian Loan Guaranty Fund does not provide for guarantees to underwriters of performance bonds, who insure contractor performance. Moreover, Buy-Indian Act regulations, while providing for Indian preference in contracting, also require performance bonding of Indian contractors. In the area of Surface Transportation Act construction, particularly, and in construction of education, medical, residential, and other public facilities, Indian contractors are passed over because of their inability to meet all of the bonding requirements. As a consequence, substantial construction and other contract employment opportunities are lost by Indian businesses. Moreover the failure of contracting officers to employ a sliding scale, a matter within their discretion, to assessing the degree of bonding required, has resulted in their continued requirement of 100% bond cover.

Providing a performance bond guarantee would have immediate impacts on Indian employment in construction activities and provide an incentive to buyers and procurement agents to purchase goods and services from Indian businesses. The present system operated by the Bureau of Indian Affairs works to the detriment of Indian businesses, who frequently find themselves in competition with the BIA's own highway construction activities. Decentralizing the determination of whether or not a bond should be guaranteed to private underwriters would avoid the unproductive involvement of a government bureaucracy largely ignorant of what performance means.

THE PRESIDENT'S COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE INDIAN LOAN GUARANTY FUND BE AMENDED TO PROVIDE FOR GUARANTEES TO UNDERWRITERS OF SURETY BONDS, TO A MAXIMUM EXTENT OF 50 PERCENT, AND THAT PRIVATE UNDERWRITERS RATHER THAN THE BUREAU OF INDIAN AFFAIRS BE PERMITTED TO MAKE THE UNDERWRITING DETERMINATION.

BUSINESS DEVELOPMENT - INTRODUCTION

ROLE OF TRIBAL GOVERNMENT

In order for successful business development to take place on Indian reservations, there is a need for tribal development, investment, and implementation policies and strategies which are favorable to business development. A. Waterson summarized his experience in "Development Planning: Lessons of Experience," thus:

> The available evidence makes it clear that in countries with development plans, lack of adequate government support for the plans is the prime reason why most are never carried out. Conversely, the cardinal lesson that emerges from the planning experience of developing countries is that the sustained commitment of a politically stable government is the sine qua non for development. Where a country's political leadership makes development a central concern, the people can also be interested through a judicious use of economic incentives. And, although it is never easy to reform administrative and institutional inefficiency, commitment by political leaders is a necessary condition for reform; without it, reform is impossible.

Indian tribes need to rethink what their role should be in economic development. Instead of monopolizing reservation economic activity, the role of encouraging private sector development through tribal development, investment, and implementation policies and strategies, should be given serious consideration. Tribal leadership needs to act to improve the reservation business climate, to exercise sovereign immunity responsibly, and to link tribal public financing of infrastructure to business development activity.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBAL GOVERNMENTS EXERCISE SOVEREIGNTY IN WAYS WHICH ENHANCE OPPORTUNITIES FOR INDIVIDUAL INDIAN BUSINESSES AND IMPROVE THE CLIMATE FOR PRIVATE SECTOR INVESTMENT BY DEVELOPING POLICIES AND ENACTING MODEL CODES, SUCH AS COMMERCIAL CODES, WHICH MINIMIZE RISKS TO INVESTORS AND WHICH ENCOURAGE PRIVATE INITIATIVE.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBAL GOVERNMENTS PROVIDE NOTICE THROUGH THEIR LEGISLATIVE PROCESSES THAT THE DEFENSE OF SOVEREIGN IMMUNITY TO SUIT WILL ONLY BE INVOKED IN THOSE CASES WHERE TRUST ASSETS, OR TRUST INCOME NOT EXPRESSLY WAIVED, ARE INVOLVED.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBAL GOVERNMENTS INVOKE A POLICY OF LINKING CONSTRUCTION OF INFRASTRUCTURE TO PRIVATE SECTOR BUSINESS DEVELOPMENT IN ORDER TO ASSURE THAT DEPRECIATION AND MAINTENANCE COSTS DO NOT CREATE MUNICIPAL OVERBURDEN.

BUSINESS PLANNING, MANAGEMENT, AND TECHNICAL ASSISTANCE

Because business developments are extremely prone to failure in their early years, there is a definite need for tribal governments to be more hard-nosed in evaluating their ideas than they have been in the past. Certain basic questions need to be asked by tribes as a routine part of their planning process.

What kind of business, in an economic sense, will be created?
What will be the size of the business's market?
How marketable is the product that will be sold?
Are the start-up costs commensurate with the long-term prospects?
What will the relationship be between profitability and price?
Can the business be easily explained to potential investors?
What mechanism exists for investors to sell their interests?

A business orientation which focuses on local comparative advantages in relation to production of goods and services, and their markets, needs to be developed. Every Indian reservation has economic advantages to offer, whether or not they are possessed of abundant natural resources. To the extent that human capital is present, the productive employment of labor in the right business activity can be that advantage. A business planning process which seeks to build businesses that are profitable is indispensable to reservation economic development.

It was abundantly clear from the national hearings process that Indian tribes lack business management and business technical capabilities. Tribes do not routinely ask what the most significant risks and problems are in launching business enterprises. They do not assess the long-term prospects for profit, the future financing and cash flow requirements, the demands of operating lead times, seasonality, facilities location, marketing, or pricing strategies. They have traditionally relied upon proposals to government agencies.

Business management and business technical assistance to Indian individuals, businesses, and tribes are greatly needed to avoid the pitfalls of public sector planning and to enhance the probabilities for profitability. An effective business plan, in contrast to a grantsman's proposal, is capable of convincing investors that a growth opportunity has been identified, that the entrepreneurial or management talent is available to exploit the opportunity, and that a believable program for producing profits exists.

Private Indian Business Development Centers, which provide appropriate business management and business technical assistance in such areas as industrial engineering, production design, marketing, finance, etc., could provide no-nonsense sources of assistance. They could assist tribes to prepare business plans on products or services, market research and evaluation, pricing, sales and advertising plans, break-even analyses, assist on product, facilities, management, and organizational improvements; profit and loss forecasting; approaches to capitalization, etc. The provision of expert private-sector-located management and technical assistance, unlike that presently provided by the federal government, could provide the difference between success and failure.

Business planning, management, and technical assistance capabilities need to be acquired or created if Indian reservation economic development is to succeed.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBAL GOVERNMENTS ENCOURAGE BUSINESS PLANNING ACTIVITY WHICH MEETS GOALS BOTH OF FINANCIAL PROFITABILITY AND SOCIAL ACCEPTABILITY.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT FUNDS PRESENTLY APPROPRIATED FOR BUREAU OF INDIAN AFFAIRS ECONOMIC DEVELOPMENT ACTIVITIES BE DIRECTED TOWARD SUPPORTING THE CREATION OF PRIVATE SECTOR INDIAN BUSINESS DEVELOPMENT CENTERS WHICH PROVIDE FOR EXPERT PRIVATE SECTOR BUSINESS TECHNICAL ASSISTANCE TO EXISTING AND POTENTIAL INDIAN BUSINESSES.

ENCOURAGING PRIVATE INITIATIVE THROUGH PRIVATE BUSINESS ASSOCIATIONS

Tribal governments should not act in competition with private Indian individuals or private business associations. For example, where the degree of fractionated land ownership is high, undivided interest holders could be encouraged to pool their interests in allotments, and by leasing tribal lands, engage in cooperative farming and ranching. Instead of receiving insignificant lease rentals as they now do, they could benefit from employment and profits. With 60% of Indian lands leased to non-Indian owners, significant potential exists for innovative private business associations to engage in economic activity.

Moreover, tribes need not be the prime promoters of business activity. Indian business development corporations could be created to provide sources of equity or debt financing to private Indian individuals. They, rather than non-Indian lessees, could lease tribal resources and use them in business activity.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBES EXPLORE WAYS OF OVERCOMING THE PROBLEMS OF FRACTIONATED HEIRSHIP LAND, THROUGH INNOVATIVE FINANCING OF JOINT VENTURE RANCHING OR FARMING, WHICH OFFERS INDIVIDUAL UNDIVIDED INTEREST HOLDERS AN OPPORTUNITY TO PARTICIPATE IN OWNERSHIP.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT FUNDS PRESENTLY APPROPRIATED FOR BUREAU OF INDIAN AFFAIRS ECONOMIC DEVELOPMENT ACTIVITIES BE DIRECTED TOWARD SUPPORTING THE CREATION OF INDEPENDENT PRIVATE SECTOR INDIAN BUSINESS DEVELOPMENT CORPORATIONS, THROUGH PROVISION OF LIMITED EQUITY CAPITAL, WHICH CAN SPONSOR OR FINANCE PRIVATELY OWNED INDIAN BUSINESS ENTERPRISES ON OR NEAR INDIAN RESERVATIONS.

LABOR MARKETS - INTRODUCTION

Economists classify markets in terms of their structure, that is, the number and size of economic buyers and sellers, the degree to which products differ from one another, and the ease with which new producers or suppliers can enter a market. The structure of the market determines the amount and kind of competition that will prevail and how prices will ultimately be set. Labor markets are those contacts between buyers and sellers for a given kind of labor. For the majority of jobs, such contacts occur in a relatively small geographic area, limited mainly by the distance people are willing to travel to work. For certain occupations, the labor market can be nationwide. In most cases however, the labor market area consists of a medium-sized or large urban center and the territory surrounding it. About 250 such areas in the United States are considered major labor market areas by the Labor Department's Bureau of Employment Security.

The traditional competitive free market model for labor is characterized by consumer sovereignty, individual utility and profit maximization, perfect competition and economic efficiency with very many "atomistic" producers and consumers, none of whom is large enough to influence prices or wages. The level of employment and the "wage rate" are determined simultaneously with all other prices and factor uses in the economy by the forces of supply and demand.

The problem with the traditional labor market model is that it is not very applicable to the realities of wage and employment determination on Indian reservations. Wage rates are typically not flexible downward since they are largely determined by "institutional" forces, including labor union pressures, legislated government salary scales, and corporate or business hiring practices. There are many more Indian laborers seeking employment at the going wage than there are jobs available. Involuntary unemployment and underemployment are pervasive.

The national labor movement experience is extended to Indian reservations through a host of federal labor laws which do benefit labor, but do not benefit Indian labor in economic activity located within Indian reservation boundaries. Since the structure of labor markets determines the degree of competiton, and that structure benefits organized labor to the detriment of Indian labor, a more effective approach to stimulating local Indian labor markets would be to recognize the rights of Indian tribal governments to exercise their own governmental powers in the regulation of local, reservation based, labor markets. In 1980, there were 106,947 American Indians and Alaska Natives living on Indian reservations or other trust lands located in 27 states, 16-65 years old, who were unemployed and were actively seeking employment. A great many of these Indians were unable to work on construction, mining, and resource development projects located on their own reservations because of federal laws benefiting the importation of outside labor. Considering the small number of unemployed Indians nationally, relaxing the application of federal laws in favor of local tribal governmental regulation would not materially damage organized labor's hold on off-reservation labor markets.

The stereotype of "Indians who don't want to work," is challenged by the fact that federal laws benefiting non-Indian and non-local labor, work against employment of Indians. There is a difference between not wanting to work, and being barred from working.

WAGE RATE REGULATION

The Davis-Bacon Act received much criticism in the national hearings process for its discriminatory impact on Indian contractors and on the local hiring of Indian workers on construction projects taking place on Indian reservations. The main criticism was that it requires workers to be paid the "prevailing wage" for a particular type of work in a particular locality. As the Senate Select Committee on Indian Affairs pointed out, the original purpose of Davis-Bacon, passed during the Great Depression of the 1930's, was to prevent federal contractors from bringing into an area of federal construction out-of-state workers who generally worked for less than the local community workers, thereby undercutting and depressing prevailing local wage scales, demoralizing local labor markets, and disrupting local economic conditions. Yet, it is precisely those unwanted effects which Davis-Bacon has on Indian reservation employment. The direct result of Davis-Bacon is discrimination against the hiring of Indian labor for development projects located on Indian reservations.

The Act was not designed to increase construction wages or to benefit wage rates in an area. Its purpose was to maintain wage and benefit levels already found to prevail in an area. Yet as applied to Indian reservations, where little if any similar precedent-setting construction activity has been performed, the Davis-Bacon wage and benefit rates are often much higher than they would otherwise be. This is due, in large part, to the Labor Department's failure to expend that effort to compute Davis-Bacon rates which are specific to Indian reservations. The Labor Department is supposed to conduct surveys which include all workers, both union and non-union, who are performing similar work in an area. Studies by the General Accounting Office, however, show that the Labor Department uses procedures which often rely upon old data, data from outside of the local area, or which simply use the prevailing union rates in construction. All of these practices discriminate against nonunionized bidders on Indian reservations.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE DAVIS-BACON ACT BE AMENDED TO EXEMPT FROM ITS COVERAGE THOSE FIRMS WHICH CARRY OUT CONSTRUCTION WORK ON INDIAN RESERVATIONS OR TRIBAL LANDS.

LABOR RELATIONS

One of the problems in reservation economic development has been the issue of who receives the scarce number of job opportunities that are created on a reservation. Typically, these jobs are created through the commercial development of a natural resource, or are connected to federal contracts for infrastructure development - roads and housing, for example. Traditionally, off-reservation companies receiving tribal or federal contracts have an existing skilled work force, which is in many cases unionized. By using the union situation, or by insisting on high skill levels (or "qualified" applicants), companies doing reservation business have historically hired few reservation workers. Besides denying Indian workers the opportunity to work on the development of their own resources, this situation also results in inflated wages going to the non-reservation workers. When Indians are hired it is usually in non-management, low-skill-level occupations.

In recent years, tribes have attempted to address employment problems by pushing Indian preference in hiring for work done on reservations. Tribal Employment Rights Offices (TERO's) for example, have been particularly active in promoting such hiring by using predetermined targets negotiated with employers. A major impediment to increasing Indian employment in work done on reservations has been the limited authority of tribes in implementing Indian preference in hiring, particularly in regard to the authority vested in the National Labor Relation Board's (NLRB) jurisdiction over union contractors, with companies having approved collective bargaining agreements.

In the past, the NLRB has held that Indian preference violates the right to collectively bargain under the National Labor Relations Act. The collective bargaining requirement results in union contracts favoring the employment of outside labor, not Indian labor residing within the local Indian reservation labor market. Tribal governments need as many tools as possible in order to help their unemployed gain access to labor markets and to develop experience and skills necessary to participate in local economic development. Legislation, giving Tribal government the option to decide on whether they wish NLRB jurisdiction over matters impinging upon the implementation of Indian preference, would recognize the injustice which NLRB jurisdiction creates in its discriminatory impact on local Indian labor markets.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE NATIONAL LABOR RELATIONS ACT BE AMENDED TO PERMIT INDIAN TRIBES THE OPTION OF EXCLUDING NATIONAL LABOR RELATIONS BOARD JURISDICTION OVER COLLECTIVE BARGAINING MATTERS WHICH DETER INDIAN PREFERENCE IN EMPLOYMENT IN ECONOMIC ACTIVITY ON INDIAN RESERVATIONS.

RIGHT TO WORK

A continuing problem on Indian reservations has been the lack of private sector appropriate skills training, particularly through the on-the-job training process. There is relatively little true private sector development where such skills can be obtained. This lack of opportunity has been further exacerbated in many instances when infrastructure development, primarily through federal contracts, is conducted by firms with union agreements. These union agreements serve to prevent reservation Indian labor from employment in such projects. In addition to not receiving skills training or work experience, and keeping unemployment high, salaries paid to non-reservation workers go off the reservation.

Considering the government-to-government relationship with tribes, they should be allowed the same latitude as states to decide "right-to-work" issues. This decision will allow them the right to determine the role that unions play in their self-determined development process and, if a tribal right-to-work law is adopted, allow individuals the freedom of choice regarding union membership.

Section 14b of the Labor Management Relations (Wagner) Act, popularly known as the Taft-Hartley Act, provides both states and territories the "right-to-work" option. Tribes, which have the same governmental functions as states, can be included under this authority by simple amendment.

PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT SECTION 14(b) OF THE TAFT-HARTLEY ACT BE MADE AVAILABLE AT THE OPTION OF INDIAN TRIBES TO THE SAME EXTENT AND CIRCUMSTANCES AS IT IS TO STATE GOVERNMENTS.

TRAINING

Tribally run skills-training programs have focused on training individuals through employment in tribal government or in tribal government-run businesses, many of which are maintained by federal subsidy. Past general federal policy on public sector employment clearly promoted this use of training resources. Lack of a private sector market on reservations has resulted in individuals receiving training in occupations generally having little relevance to local labor markets. This has resulted in a perception by businesses that reservation Indian labor is "unskilled" for private sector work. Inferior education and high drop-out rates add to the unemployment problem. Unemployment creates negative environments. Indian labor suffers from low self-esteem, alcohol and drug dependency, high delinquency and crime rates, ill health, suicide, despair, and anomie.

An approach to Indian unemployment is the creation of unsubsidized private sector jobs. Training can assist in facilitating this. Tribes should gear their training efforts to private sector labor markets. An assertive effort can be made to attract outside businesses to the reservation, to develop small businesses, and to provide business-oriented training for potential entrepreneurs, rather than concentrating on public service employment as has been done in the past.

Tribes should place greater emphasis on business management training by providing for courses on business management, marketing, finance, etc. Active partnerships with the private sector, on or near reservations, should be sought in order to develop better targeted training plans. Possibly, advisory "Private Industry Councils" could be used. More training off the reservation could be utilized to expose individuals to successful business management operations, through creative use of "try-out employment" concepts.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT TRIBAL GOVERNMENTS FOCUS THEIR TRAINING PROGRAMS ON PRIVATE SECTOR LABOR MARKETS WHERE JOBS EXIST, OR ON PRIVATE BUSINESS DEVELOPMENT ACTIVITY WHICH IS CREATING PRIVATE SECTOR LABOR MARKETS.

DEVELOPMENT INCENTIVES - INTRODUCTION

The potential market demand of federal procurement of goods and services from the private sector, which amounted to some $165 billion in FY 1983, and such preferential procurement instruments as already exist, would appear to offer large opportunities for Indian owned enterprises, both individually and tribally owned. However, testimony from the Commission's public hearings from around the country and analysis of the literature indicate that Indian tribes and firms are encountering difficulty in making federal contracting and procurement work for them in the same way that it is for other small and disadvantaged minority-owned firms, for small businesses, for firms in labor surplus areas, and for enterprises benefiting from mandatory procurement requirements for the Federal Prison Industries and the National Industries for the Blind and the Severely Handicapped.

In the obstacle analysis work of the Commission, the major federal capital obstacle to Indian economic development was identified as federal contract and procurement system weaknesses. The Bureau of Indian Affairs was cited for not effectively implementing its Buy-Indian Act authorities in its contracting and procurement activities and for being unduly restrictive in requiring Indian firms to be 100% owned and controlled by Indians. Note that the Small Business Act only requires 51% ownership for participation by disadvantaged minority businesses in SBA's assistance programs. The more restrictive requirement by BIA limits the ability of Indian firms to obtain capital and access to technical and management expertise by joint venturing with private investors.

The Defense Department was criticized for not implementing its discretionary Buy-Indian authorities, in place since Fiscal Year 1982, for purchases from qualified Indian suppliers of goods and services who could meet the quality, cost and delivery requirements dictated by the Department of Defense mission. The SBA was heavily criticized for its restrictiveness and procedural rigidities which favor minorities, but not Indian tribes or Indian enterprises, and for inconsistency and confusion among different district and regional offices as to the requirements of who is considered to be an Indian, whether tribal enterprises are eligible, how to handle the issue of federal, state or Indian tribal government charters for Indian enterprises, whether to allow non-Indians or non-disadvantaged but experienced businessmen on boards of directors for tribal enterprises, who to include in determining economic disadvantage of an entire tribe, and how "management of daily operations" was to be considered for a tribal enterprise with a salaried professional administrator. The Labor Surplus Areas Program (LSA), which allows federal agencies to set aside contracts for competition among firms which carry out more than 50 percent of the contract in labor surplus areas, was criticized because Indian reservations are not regarded as "civil jurisdictions" for LSA classification purposes.

Such preferential procurement programs do not work in favor of Indian tribes, Indian businesses, or Indian individuals. In spite of bureaucratic road shows, memoranda of understanding, and much touted technical assistance availability, the embarrassing fact is that there is little success that can be identified for Indian businesses in comparison to that enjoyed by other disadvantaged minorities, small business, or firms in labor surplus areas.

To take labor surplus area set asides as an example, in FY 1982, and FY 1983, awards to firms in labor surplus areas exceeded $39 billion each year. However,

firms on Indian reservations, which have the highest unemployment rates in the country, are unable to compete for these contracts. The areas chosen for LSA classification are civil jurisdictions, corresponding to an area of local government authority, rather than a metropolitan area or labor market area basis. By this method, federal contracts can be directed to those specific localities with high unemployment rates, rather than to all civil jurisdictions within a metropolitan area. Civil jurisdictions are currently defined as all counties in the United States plus all cities with a population of 50,000 or more. Indian reservations are not currently regarded as civil jurisdictions for LSA classification purposes although they perform the same functions as county and other local governments which are so classified and although they have clearly identifiable land with boundaries. The Bureau of Labor Statistics does not maintain specific updated statistics on Indian reservation unemployment, however, the Bureau of Indian Affairs' annual reservation unemployment statistics could be used for classification purposes. The BIA statistics have been used in the past by the Department of Labor in its implementation of formula allocation job training programs for Indians.

Other identified major barriers to the creation of Indian enterprises as a means towards Indian economic development included inadequate subcontracting, inconsistency among federal procurement regulations, poor loan servicing and monitoring, Davis-Bacon wage requirements which operate to the disadvantage of Indian construction firms and to the employment of Indian workers on construction projects on Indian reservations, and failure to set aside or support the setting aside of manageable procurements for Indian businesses.

It is estimated that current federal contracting with Indian tribes and Indian firms comes to less than two-tenths of one percent of total federal procurement. This minimal amount includes the "638" contracts by the Bureau of Indian Affairs and the Indian Health Service, "Buy Indian" contracting by BIA and IHS, and SBA subcontracts with Indian 8(a) firms. If contracts with Indian firms could be increased each year by one-tenth of one percent of total government procurement, this would add some $200 million in new contracts for Indian enterprises. Such an increment each year would be miniscule in terms of federal procurement and would not present onerous burdens on any single federal agency. A one-tenth of one percent annual increment would be only a small portion of larger annual increases of total procurement so that no business would be taken away from any existing firms or minority or other disadvantaged groups. Such an increase could be easily absorbed by Indian enterprises.

A goal is suggested of a government-wide Indian procurement target of $1 billion over an initial five year period to be achieved through cumulative increments of $200 million per year, starting in FY 1985, as a means of stimulating private sector Indian business development and employment. This goal is consistent with the President's Executive Order 12432 on Minority Business Enterprises which established a $22 billion target in federal contract and subcontract awards to minority firms over the three year period of FY 1983 to FY 1985.

Based upon Bureau of Labor Statistics figures, it is estimated that yearly increments of $200 million in federal procurement contracts to Indian enterprises would result in some 9,000 new jobs within Indian firms and some 3,000 new jobs in businesses supplying parts, materials and services to these Indian firms. This direct and indirect employment impact is estimated to generate some $171 million

per year in additional income to the economies of the Indian reservations and the surrounding local communities. It is also estimated that this would in turn generate $19 million additional revenue in federal income tax each year. Sustained increments over the initial five year period would translate by 1989 into 44,000 new jobs in Indian enterprises that year, 15,000 new jobs in surrounding communities, $855 million in resulting wage income, and $94 million in additional federal income tax. Revising or refining future five-year procurement targets should be determined by the proposed National Commission on Indian Business Development.

As a development incentive, the federal procurement opportunity would not require any new federal funds. It would draw upon the budgets of government agencies who already purchase goods and services from the private sector to carry out their government missions. It would not give money to Indians. It would improve the access by Indian firms to the federal marketplace and allow them the opportunity to earn their way. Indian individuals would benefit as would Indian tribes, the surrounding community, and the federal government from decreased welfare payments and increased federal income tax payments.

Each federal agency would be called upon to make use of existing procurement authorities and instruments in seeking to reach government-wide targets for Indian procurement of $1 billion over the initial five year period. Actions would include revision of E.O. 12432 consistent with the intent of the overall procurement recommendations. Other actions would include assigning oversight and reporting responsibility for Indian procurement within the network of the Offices of Small and Disadvantaged Business Utilization created by the Small Business Act, seeking equal access by Indian firms for participation in 8(a) contracting by the Small Business Administration, in small business set-aside contracting, in labor surplus area set-aside contracting, and others as appropriate. Further actions should include effective implementation of the Buy Indian authorities of the Department of Defense, Indian Health Service, and Bureau of Indian Affairs, as well as expanding the scope of the Acts.

The Small Business Administration and other agencies should recognize Indian individuals and tribal enterprises located on Indian reservations or trust lands which have been organized under federal or tribal laws, as well as those off-reservation Indian enterprises which have been organized under state charters. Such recognition is consistent with the President's government-to-government policy statement.

There is also a need to have consistent definitions respecting eligibility of Indians and Indian tribes. The following standard definitions are suggested:

> "American Indian Tribe" means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska native village, or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which is recognized by the Secretary of Interior as having special rights and responsibilities, and is recognized as eligible for the services provided by the United States to Indians because of their status as Indians; or is recognized as such by the tribe, band, nation, pueblo or other organized group or community resides."
>
> "American Indian means any person of American Indian descent who is an enrolled member of an American Indian tribe, as defined herein; or, who is a descendant of an enrolled member of a tribe whose tribal rolls have been closed by act of

Congress; or, any Alaska native subject to the Alaska Native Claims Settlement Act."

"American Indian/Alaska Native Business Enterprise means any legal business organization (regardless of business form or activity) that is at least 51% Indian owned, or Indian controlled, by American Indian(s)/Alaska Native(s); which business enterprise may be managed by Indians, or by an agent under its control."

"Moreover, to qualify for Small Business Administration section 8(a) certification, or for Buy Indian Act eligibility, the Board of Directors need not be comprised of more than a majority of Indian members."

"Economically Disadvantaged Indian Tribe shall be determined by the SBA by considering per capita income levels of the Indian tribe, excluding judgment awards; the degree of poverty within the population, and the unemployment rate."

In addition to improving access by Indians to federal procurement opportunities, Enterprise Zones could be additional development incentives. Currently, Indian reservations have very little in the way of private sector economies. In order to assist economically depressed areas, the Administration has proposed the Enterprise Zone Employment and Development Act. This act would designate zones within which major tax incentives and regulatory relief could be offered to stimulate job creation, business growth and physical revitalization. Indian reservations should be an important part of this proposal.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE PRESIDENT'S EXECUTIVE ORDER CREATING THE NATIONAL COMMISSION ON INDIAN BUSINESS DEVELOPMENT PROVIDE FOR A GOVERNMENT-WIDE INDIAN PROCUREMENT TARGET OF $1 BILLION WITHIN FIVE YEARS, TO BE ACHIEVED THROUGH CUMULATIVE INCREMENTS OF $200 MILLION PER YEAR, STARTING IN FISCAL YEAR 1985, FOR THE PURPOSE OF STIMULATING PRIVATE SECTOR INDIAN BUSINESS DEVELOPMENT AND EMPLOYMENT.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE BUY-INDIAN ACTS BE AMENDED TO EXTEND TO ANY TYPE OF FEDERAL PROCUREMENT.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT BUY-INDIAN ACT REGULATIONS BE REVISED TO INCLUDE AS ELIGIBLE ANY INDIAN BUSINESS WHICH IS EITHER MAJORITY INDIAN OWNED, OR HAS INDIAN MANAGEMENT CONTROL, OR ANY BUSINESS WHICH HAS TWO-THIRDS OR MORE INDIAN EMPLOYMENT.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT THE DEPARTMENT OF LABOR REGULATIONS BE REVISED TO INCLUDE INDIAN RESERVATIONS AS SEPARATE "CIVIL JURISDICTIONS" FOR PURPOSES OF DETERMINING LABOR SURPLUS AREAS, FOR LABOR SURPLUS AREA CONTRACT SET-ASIDES.

THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES RECOMMENDS

THAT INDIAN TRIBES BE DESIGNATED AS ELIGIBLE PARTICIPANTS IN ENTERPRISE ZONES.

SCOPE OF WORK AND FINDINGS OF THE

PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES

Part II

TABLE OF CONTENTS

Page

I SCOPE OF WORK & METHODOLOGY..... 3

II SPECIAL INITIATIVES TO PROMOTE ECONOMIC DEVELOPMENT.....11

III FINDINGS OF THE COMMISSION.....17

Composition of Obstacles to Indian Reservation Economic Development.....19

Tribal Government Obstacles to Indian Reservation Economic Development.....27

Bureau of Indian Affairs Obstacles To Indian Reservation Economic Development.....55

Federal Obstacles to Indian Reservation Economic Development.....55

State & Local Government Obstacles to Indian Reservation Economic Development.....67

APPENDICES.....75

Population Profile.....79

Budget Breakdown for Federal Indian Domestic Assistance.....87

National Hearings Sites: Individuals and Organizations Providing Testimony.....99

Overview of the Private Sector Opportunities and Constraints Study.....113

Tribal Water Rights Issues: Prospect for Economic Development.....127

I SCOPE OF WORK AND METHODOLOGY

SCOPE OF WORK

Sections 2 and 3 of the Executive Order creating the Presidential Commission on Indian Reservation Economies set forth the scope of work for the Commission to follow. In relevant part these sections provided:

Section 2. Functions

a) The Commission shall advise the President on what actions should be taken to develop a stronger private sector on federally recognized Indian reservations, lessen tribal dependence on federal monies and programs and reduce the federal presence in Indian affairs. The underlying principles of this mission are the government-to-government relationship, the established federal policy of self-determination and the federal trust responsibility.

b) The Commission will focus exclusively on the following items, and not on new federal financial assistance:

1) Defining the existing federal legislative, regulatory, and procedural obstacles to the creation of positive economic environments on Indian reservations.
2) Identifying and recommending changes or other remedial actions necessary to remove these obstacles.
3) Defining the obstacles at the state, local and tribal government levels which impede both Indian and non-Indian private sector investments on reservations.
4) Identifying actions which these levels of government could take to rectify the identified problems.
5) Recommending ways for the private sector, both Indian and non-Indian, to participate in the development and growth of reservation economies, including capital formation.

c) The Commission should review studies undertaken in the last decade to obtain pertinent recommendations that are directly related to its mission.

d) The Commission shall, unless sooner extended, submit a final report to the President and to the Secretary of the Interior....

Section 3. Administration

....
....

c) The Secretary of the Interior shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the effective performance of its functions.

d) The Commission will meet approximately 15 times at the call of the chairmen. All meetings of the Commission and all agenda must have prior approval of the chairmen.

e) In carrying out its responsibilities, the Commission is authorized to:

1) Conduct hearings, interviews, and reviews at field sites, or wherever deemed necessary to fulfill its duties.
2) Confer with Indian tribal government officials and members, private sector business officials and managers, and other parties dealing with matters pertaining to the Commission's mission.

In order to carry out the responsibilities contained in its Executive Order, the Presidential Commission on Indian Reservation Economies settled upon a Management Plan which contained various methodological approaches to fulfilling its charges.

METHODOLOGY

Background:

From the beginning of the Commission, it was apparent that a large number of constituencies, within and outside of government, claimed to know what the obstacles were to Indian economic development, as well as knowing what the solutions should be. The Commission's tendency was to accept identifications made by individuals, but not to accept individual identifications as being all inclusive, nor to accept individual solutions as being dispositive. A problem which surfaced in the early days of the Commission, was the plethora of obstacle identifications being thrust upon the Commission, along with solutions which were being advanced with great emotional conviction. Complicating matters was the fact that points of view, and particularly the solutions advanced, were not always in agreement.

In order to carry out the responsibilities set forth in the Executive Order; to insure that anyone who had a problem to identify could present it to the Commission; and to expand the range of viewpoints on problems, the Commission proceeded to develop a study approach which would accomodate these needs. In thinking about a methodology to capture all of the problems, it became important to avoid a number of pitfalls. One potential pitfall was seen as bland and uncritical acceptance of the conventional wisdom about Indian economic development problems. Another pitfall to be avoided were ad hominem pressures which would reflect the personal interests of the Commissioners themselves. Rejecting such pressures and a priori solutions, the Commission developed a methodology which contained the following elements:

a) Scope of Study
b) Obstacle Definition
c) Economic Content Analysis
d) Attribution Analysis
e) Frequency Analysis
f) Functional Analysis
g) Synthesis/Rank Ordering
h) Characterization
i) Indian Expert Panel review
j) Commission Review

How these elements were applied to studying identifications of obstacles to Indian economic development, is discussed in more detail below.

a) Scope of Study:

Within the limited resources and time available to the Commission to complete its work, it was decided that a number of specific perspectives on problems confronting Indian economic development would contribute to a better understanding of obstacles impeding that development. The following perspectives were incorporated into the overall study effort:

Perspective	Study Effort
- Indian people	- Nationwide Field Hearings
- Academia	- Indian Economic Development Literature Review
- Business	- Private Sector Study on Opportunities and Constraints
- Federal Government	- Critical Path to Failure Study of Federal Programs and Administrative Systems
- State & Local Government	- Local Government Conflict Analysis

While each of the study efforts noted above employed different methodological approaches to identifying obstacles to Indian economic development, what they had in common was that they were all geared to obstacle identification. As such, the outputs from these study efforts were identifications of obstacles to Indian economic development, from different perspectives.

b) Obstacle Definition

An "obstacle" to Indian economic development was defined as anything which adversely affected competitive returns to land, labor, and capital (factors of production) as they were factored into the economic development process. For example, "zoning" as an identified problem could be considered an obstacle in the sense that it adversely affects competitive returns to land. Since it is obvious that an obstacle can have more than one effect, obstacle analysis included primary, secondary, and tertiary effects. In all cases, the determination would be made from an analysis of the specific situation or other information presented to the Commission.

c) Economic Content Analysis

Information developed through the analytical study efforts above, was subjected to an economic content analysis. A problem cited by a witness, for example, would be analyzed to determine whether or not that problem, in the particular situation presented, adversely affected competitive returns to land, labor, or capital. If there were adverse affects on competitive returns to a given factor of production, then the problem cited was noted as an obstacle.

As a result, grouping obstacles according to land, labor, and capital, was made possible.

d) Attribution Analysis

Once an obstacle was categorized according to its primary factor of production, land, labor, or capital, an attribution analysis was undertaken. The purpose of an attribution analysis was to determine whether or not the obstacle was primar-

ily attributable to the federal government, state and local government, tribal government, or other source. As a result of this analysis, a matrix could be constructed within which data cells containing specific identifications of obstacles could be noted. A simplified matrix is shown below as an example:

(EXAMPLE)

FACTORS OF PRODUCTION	AREAS OF ATTRIBUTION			
	FEDERAL	STATE & LOCAL	TRIBAL	OTHER
LAND	leasing BLM surveys	fishing dispute	zoning	rural-isolat.
LABOR	training		Indian pref.	
CAPITAL	Ind. Fin. Act trust funds	banking law	sovereign im.	

Obstacles which were identified from the different analytical tracks were placed in expanded data cells which contained great numbers of individual obstacle identifications. There were 2,320 individual identifications of obstacles to Indian economic development.

e) Frequency Analysis

As data on obstacles to Indian economic development was identified by the study approaches chosen by the Commission, those obstacles were loaded into data cells. Many of the obstacles identified to the Commission as problems were the same; that is, the same obstacle came to be identified more than once and from more than one source. A frequency for each obstacle was logged each time it was identified and a running total was kept and data was added to each cell. For each obstacle included within a particular cell, a superscript number was added to indicate the number of times that obstacle was identified.

f) Functional Analysis

Over a period of time, a great number of obstacles began to populate each cell. Many of the obstacles, while individually separate, were functionally related. For example, leasing procedures, leasing regulations, leasing approvals, and leasing delays, all have "leasing" in common. For purposes of grouping obstacles functional analysis of obstacles within a cell was conducted to determine functional relatedness, As a result, obstacles could be grouped and their frequencies added.

g) Synthesis/Rank Ordering

Each study produced obstacles which were analyzed for their economic content, area

of attribution, frequency, and functional relatedness. Obstacles groups were then arrayed according to their frequencies. Frequency did not denote importance, only persistence.

h) Characterization

Each obstacle grouping was then characterized. The characterization was largely based upon situational information provided along with the obstacle's identification. Narrative characterizations were written. Characterizations of obstacles were developed from information provided to the Commission and as such do not represent the views of the Commissioners, but the views of those providing that information through the study approaches.

i) Indian Expert Review Panel

A panel of Indians was selected to review the completed findings on obstacles to Indian economic development. The panel was composed of Indians who either represented regional or national Indian organizations or who represented regional Indian tribal interests. The purpose of the panel review was to share what the Commission had found in the way of obstacles to Indian economic development, and to obtain comments, suggestions, and additional points of view on each obstacle. The results of the panel review were presented to the Commissioners.

j) Commissioner Review

The Commissioners met and deliberated on the findings and comments submitted by the Indian expert panel. The findings were the basis for recommendations made by the Commissioners.

The methodology employed by the Commission was not designed for scientific accuracy. It was designed to accomodate different points of view, to view problems in an economic context, to group similar problems, and to record their persistence. No where was there an attempt to make a statement of importance. Moreover, there was no explicit attempt to scientifically explain causation. Attribution, for example, related more to location of a problem or its nature than it did to causation *per se*. The methodology provided an organized way of looking at problems. Other ways could have been developed as well, time and resources permitting.

II SPECIAL INITIATIVES TO PRIVATE ECONOMIC DEVELOPMENT

SPECIAL INITIATIVES UNDERTAKEN BY THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES

INTRODUCTION

The Commission determined initially that it would not be just another study group, preparing a report which would gather dust on a library bookshelf. From the outset the Commission has been action oriented.

Five analytical tracks were developed, each representing a different perspective on Indian economic development. A Special Initiatives track was developed to provide information on a case specific basis. The Commission identified and promoted Indian positions on matters of current importance in a number of areas, in advance of compilation of the Final Report to the President.

The Commission's assertive position on Indian Tribal Governmental Tax Status Act regulations was accepted in full by the Internal Revenue Service. The Commission took a strong position favoring tax-exempt status for tribal industrial development bonds which unfortunately was not approved by the 98th Congress.

The Commission requested that the Department of Health and Human Services upgrade the organizational position of the Indian Health Services, and asked Congress to include tribal membership on the Advisory Commission on Intergovernmental Relations.

Some of the special initiatives pursued during the past year which yielded valuable information on obstacles, causes and some possible solutions to Indian reservation economic development included the following areas:

THE INDIAN TRIBAL GOVERNMENTAL TAX STATUS ACT

The Commission worked actively with the Department of the Treasury and the Congress to secure reauthorization of the Indian Tribal Governmental Tax Status Act of 1982. Early action by the Commission was essential in assuring permanence for the Indian Tax Status Act. The Act enables Indian tribal governments to be treated in the same manner that states or political subdivisions of states are with respect to certain sections of the Internal Revenue Code.

The Commission was not successful in getting language adopted by the Congress which would have included tax exemptions on tribal industrial development bonds. However, the Commission is recommending that the Administration continue to seek acceptance for the industrial development bond language in new legislation to be submitted to the 99th Congress in 1985.

Approval by the Internal Revenue Service of the Commission's recommendations to give tribal governments the same privileges as states or political subdivisions of states for tax exemption purposes has the following effects:

1) Those paying taxes imposed by tribes would be entitled to deduct the tribal taxes in computing their federal tax liability;

2) Gifts of cash and other property to tribal governments will be deductible for federal income, estate and gift tax purposes;

3) Tribal governments will be exempt from a number of excise taxes, including those on manufactures, special fuels, highway use, and telephone service;

4) Tribal governments will be able to offer tax-deferred annuities and public retirement benefits to certain employees;

5) Tribal governments will be able to issue certain tax-exempt revenue bonds, although the exemption does not extend to private activity bonds, including certain industrial, scholarship, and mortgage subsidy bonds.

The new regulations adopted by the IRS define "essential governmental functions" in a broad sense, which allows tribes a maximum amount of flexibility in exercising their tax status. For example, funds necessary to support health, education or welfare facilities under contract to tribes from federal agencies would be in the nature of governmental functions contemplated by the regulations. Basic infrastructure and community development which serve a public purpose would also be eligible functions.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS ACT

The Commission recommended to the Congress that it amend the Advisory Commission on Intergovernmental Relations Act by adding an Indian representative for tribal governments.

The Advisory Commission on Intergovernmental Relations was established by statute and includes 26 members from the executive and legislative branches representing all three levels of government. Its members include three members from both the Senate and the House of Repesentatives, three executive branch officials, four governors, four mayors, three state legislators, three county officials and three private citizens. Its fundamental purpose is to strengthen the ability of the federal system to meet the problems of an increasingly complex society by promoting greater cooperation, understanding and coordination of activities between separate levels of government.

The Commission feels that the addition of an Indian representative of tribal governments is consistent with President Reagan's stated government-to-government policy for Indian tribes.

POTENTIAL TIMBER PROJECT IN ASIA TO UTILIZE LOGS AND WOOD PRODUCTS FROM TIMBER OWNING TRIBES IN THE PACIFIC NORTHWEST AND ALASKA

The Commission identified and has been tracking a potential timber and wood products project in the Federated States of Micronesia in the South Pacific which appears to have considerable potential for expanding the export of logs and wood products from timber owning tribes close to water based transportation facilities in the Pacific Northwest and Alaska.

This project is of interest in its own right. It may be a model for other projects by demonstrating how Indian and non-Indian entrepreneurs can work together to the mutual interest of all parties to open up new markets for Indian products; to mobilize capital investments; and to access specialized expertise needed for establishing and operating processing plants as well as for entering the export market directly rather than through brokers and third parties. One of the options that the involved tribes may explore would be the creation of an export trading company.

The base concept of the project is to ship cut timber, and possibly processed and semi-processed products such as wood chips as well as lumber, to Micronesia for further processing. This could include cutting to a particular market's specifications and producing items such as particleboard made from wood chips. The market for such products would primarily be China, but would also include Japan and newly industrializing areas such as South Korea, Singapore and Hong Kong. Products could also be shipped directly to these countries from the Pacific coast of the United States and Alaska.

In addition to lumber mill and wood processing facilities in Micronesia, the project may generate possibilities for other wood processing facilities on Indian reservations for wood chips and for rough or final processing of logs and lumber. At a later stage in the project there may be the need for such additional facilities in China to handle larger volumes of log purchases by the Chinese.

At one end of the scale, this potential project represents an opportunity for increased timber sales by Indian enterprises in the Northwest and Alaska. At the other end of the scale, the project could be organized as a joint venture involving American Indian participants, private Micronesian and American investors, and a Micronesian state government. There may also be possibilities for participation by Chinese government corporations in the joint ventures.

Indian participation as partners in the venture, including participation in downstream economic benefits from the higher value added processing and sales of the wood products, could come about through providing the timber in long-term supply contracts.

The value to the project of American Indian involvement is that logs from Indian owned lands are not under the same export restrictions as logs from U.S. Forestry Service and Bureau of Land Management lands, and the major timber owning tribes could provide guaranteed long term supplies of logs and wood products.

The value to the project of the Micronesian government's involvement is its ability to guarantee financing or to participate directly in financing the project. This could be done by utilizing the substantial funding to be available to the Micronesians over the next fifteen years as these countries move into free association with the United States after four decades of trusteeship. The Micronesian government involvement would also help in developing a market for the wood products in Pacific Rim countries such as China, Japan, South Korea, Singapore and Hong Kong.

The value to the project of the possible involvement of Chinese government corporations would be to provide guaranteed long term markets for logs and wood products. Other possibilities to explore, depending on th degree of interest by Chinese authorities, would be to join the project as investors and joint venture partners for the lumber mills and wood processing facilities in Micronesia as well as on Indian reservations in the United States.

The benefits which could accrue to timber owning Indian reservations include increased income to Indian enterprises through larger timber sales, creation of more jobs on the reservations for the cutting and the processing of logs and wood products, and participation in the higher value added downstream benefits through processing and export sales of finished wood products beyond those which would occur from the sale of logs to middlemen of third parties for domestic consumption or for export to China and elsewhere in Asia.

The Commission has participated in a series of meetings with the project organizers, representatives of timber owning tribes in the Pacific Northwest and Alaska, and the Intertribal Timber Council in Portland, Spokane and Seattle.

The Commission plans to participate in an upcoming exploratory trade mission to Micronesia and China, accompanied by representatives of interested tribes, potential United States investors and representatives of the Government of the Federated States of Micronesia.

FEDERAL PROCUREMENT AND CONTRACTING INITIATIVE

Another action which the Commission has utilized as a special initiative case study involves federal procurement and contracting with Indian enterprises.

There are a variety of preferential procurement authorities and programs by the federal government designed to stimulate business with certain groups of firms. These include small business set-asides and labor surplus area set-asides for purchasing actions by all federal agencies, small and disadvantaged business contracting by the Small Business Administration under their 8(a) program, and "Buy Indian" authorities of the Department of Defense.

However, testimony before the Commission's hearings and results of analyses and discussions with a wide variety of government agencies shows that Indian firms are having difficulty in achieving equal access to the government's preferential procurement programs and making the federal procurement system work for them in the same way that it does for other and larger minority and disadvantaged groups.

The Commission is recommending a concerted effort by the federal government to provide equal access by Indian enterprises to the purchasing power of the federal marketplace. Such an effort could give a market led stimulus to capital growth, job creation, and business and management expertise on the reservations.

It is estimated at the present time that current federal procurement and contracting with Indian tribes and Indan firms comes to some $450 million per year, or roughly two-tenths of one percent of total federal procurement. This includes "638" and "Buy-Indian" procurement by the BIA and the IHS, and 8(a) contracts to Indian firms.

If contracts with Indian firms could be increased each year by one-tenth of one percent of government purchasing, this would add some $200 million in new contracts for Indian enterprises. Such an increment each year would likley add some 9,000 new jobs in Indian firms, and some 3,000 new jobs in businesses supplying parts, materials and services to these Indian firms. This would have a positive impact not only on Indian reservations, but in the surrounding local communities and rural economies as well.

It is estimated that this direct and indirect employment impact would add some $171 million per year in wage income to the economies of the Indian reservations and the the local rural economies. It is estimated that this would, in turn, generate some $19 million in federal income taxes. If these yearly increases could be maintained over a ten year period, this would mean that government contracts to Indian firms in the year 1994 could create jobs for 88,000 people in Indian enterprises and 30,000 indirect jobs in service and supply firms. This could lead to $1.7 billion in wage income and to some $188 million in federal income taxes.

This contracting and procurement initiative would not require new federal funds. It would draw upon existing and planned budgets of government agencies who buy goods and services from the private sector to carry out their government missions. It would not give money to Indian firms. It would seek to improve the access by Indian firms to the federal marketplace, and allow them to earn money from these procurement contracts.

Individual Indian owners of firms would benefit from capital formation and improvement of business skills. Indian workers would benefit from wage earnings and from being participants in a producing system rather than recipients in a welfare system. Tribes would benefit from a strengthened economic base.

The federal agencies would not be disadvantaged because the Indian suppliers would have to meet the quality, delivery, and cost requirements dictated by the missions of the agencies.

The federal government would benefit from a broadened tax base, and the shared benefits of local development.

III FINDINGS OF THE COMMISSION

COMPOSITION OF OBSTACLES

TO

INDIAN RESERVATION ECONOMIC DEVELOPMENT

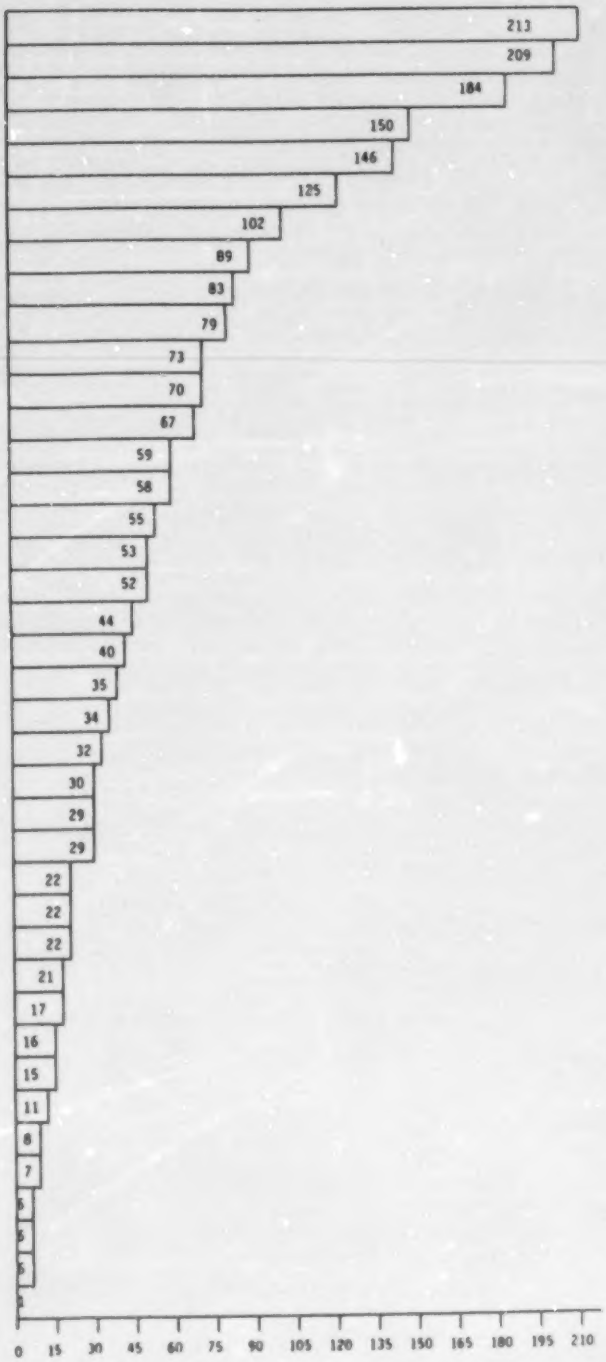
COMPOSITION OF OBSTACLES TO INDIAN RESERVATION ECONOMIC DEVELOPMENT.....p. 15

1. Obstacles to Indian Reservation Economic Development Bar Chart.....p. 16

2. Composition of Obstacles to Indian Reservation Economic Development Graph.....p. 17

OBSTACLES TO INDIAN RESERVATION ECONOMIC DEVELOPMENT

No.	Obstacle	Frequency
1.	Weak Business Management by Tribal Governments	213
2.	Jurisdictional Disputes Among Tribes, States, and Local Governments	209
3.	Trust Status Constraints on Tribal Revenue and Investment	184
4.	Rapid Turnover of Tribal Govt. and Unfavorable Business Climate	150
5.	Unskilled and Unreliable Indian Labor Force	146
6.	Incompetent BIA Asset Management	125
7.	Federal Government Contracting & Procurement	102
8.	Inad. Infrastructure, Physical Resources and Locational Incentives	89
9.	Water Rights Disputes and Stalled Water Development Projects	83
10.	Uncoordinated Federal Categorical Programs	79
11.	Tribal Political Discrimination	73
12.	Cultural Dissonance	70
13.	BIA Org. Structure, Function, and Operational Deficiencies	67
14.	Excessive BIA Regulation	59
15.	Inadequate Federal Funding	58
16.	BIA Education and Training Deficiencies	55
17.	Incompetent BIA Technical Assistance	53
18.	BIA Credit and Finance Program Deficiencies	52
19.	Indian Tax Status Act	44
20.	Federal Programming Unresponsiveness	40
21.	BIA Contracting and Procurement Deficiencies	35
22.	DOL Programmatic and Administrative Deficiencies	34
23.	Government Business Planning	32
24.	Tribal Zoning and Environmental Enforcement	30
25.	State Banking Law Security	29
26.	Alaska Native Claims Settlement Act Problems	29
27.	Incompetent Federal Technical Assistance	22
28.	BIA Economic Development Initiative	22
29.	Tribal Sovereign Immunity to Suit	22
30.	Federal Allocation Formula Inequity	21
31.	Federal-Tribal Cooperation	17
32.	Federal Data Documentation	16
33.	Excessive Federal Regulation	15
34.	Legal Protection of Indian Natural Resources	11
35.	Indian Preference	8
36.	Private Sector Competition's Access to Capital	7
37.	Fractionated Heirship Land	5
38.	Federal Environmental Protection	5
39.	Miscellaneous Federal	5
40.	Municipal Procurement Restrictions	2



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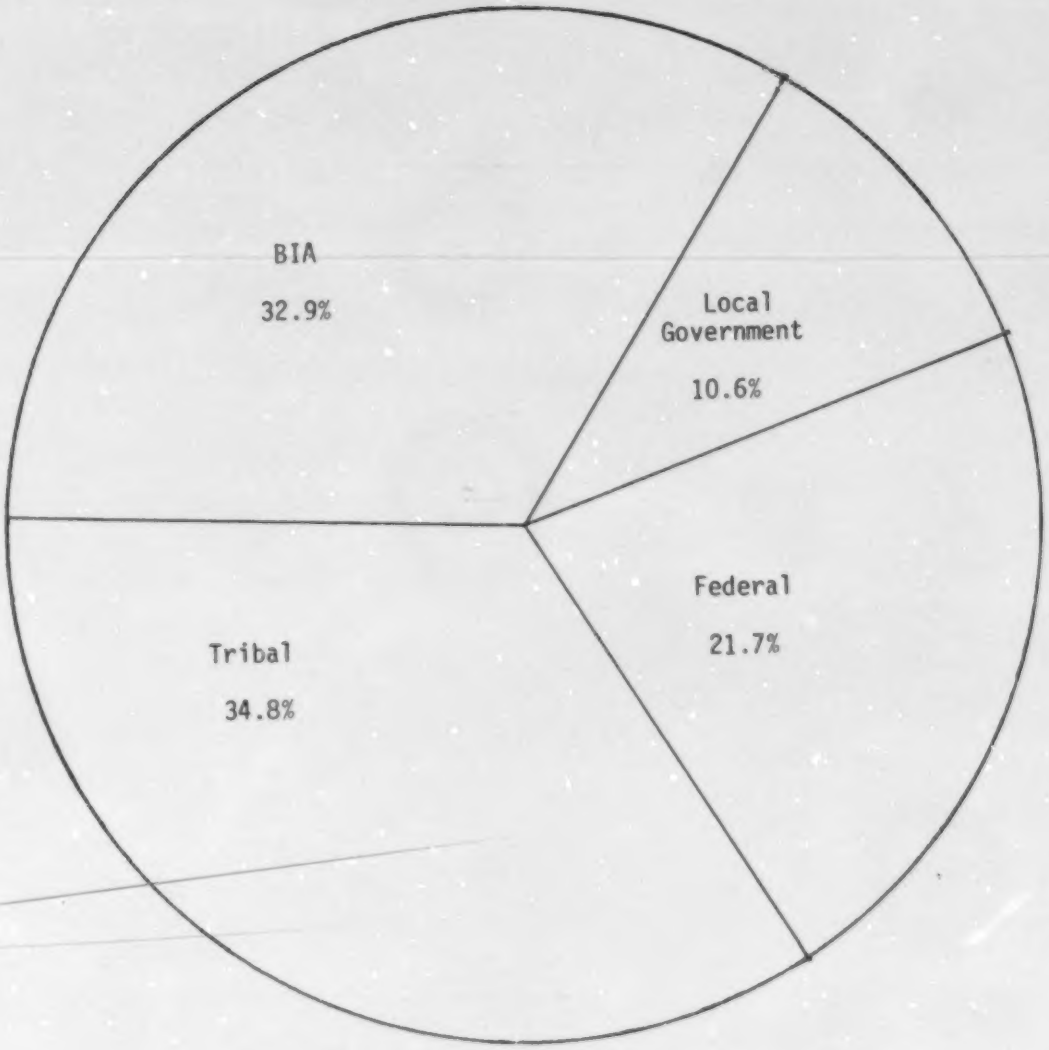
COMPOSITION OF OBSTACLES

TO

INDIAN RESERVATION ECONOMIC DEVELOPMENT



TRIBAL GOVERNMENT OBSTACLES

TO

INDIAN RESERVATION ECONOMIC DEVELOPMENT

TRIBAL GOVERNMENT OBSTACLES TO INDIAN RESERVATION ECONOMIC DEVELOPMENT.....p.18

Composition of Tribal Obstacles to Indian Reservation Economic Development Graph.....p.20

1. Weak Business Management by Tribal Governments.....p.21

2. Rapid Turnover of Tribal Governments and Unfavorable Business Climate.....p.22

3. Unskilled and Unreliable Indian Labor Force.....p.22

4. Inadequate Infrastructure; Physical Resources; and Locational Incentives.....p.23

5. Tribal Political Discrimination.....p.24

6. Cultural Dissonance.....p.24

7. Tribal Zoning and Environmental Enforcement.....p.25

8. Tribal Sovereign Immunity to Suit.....p.25

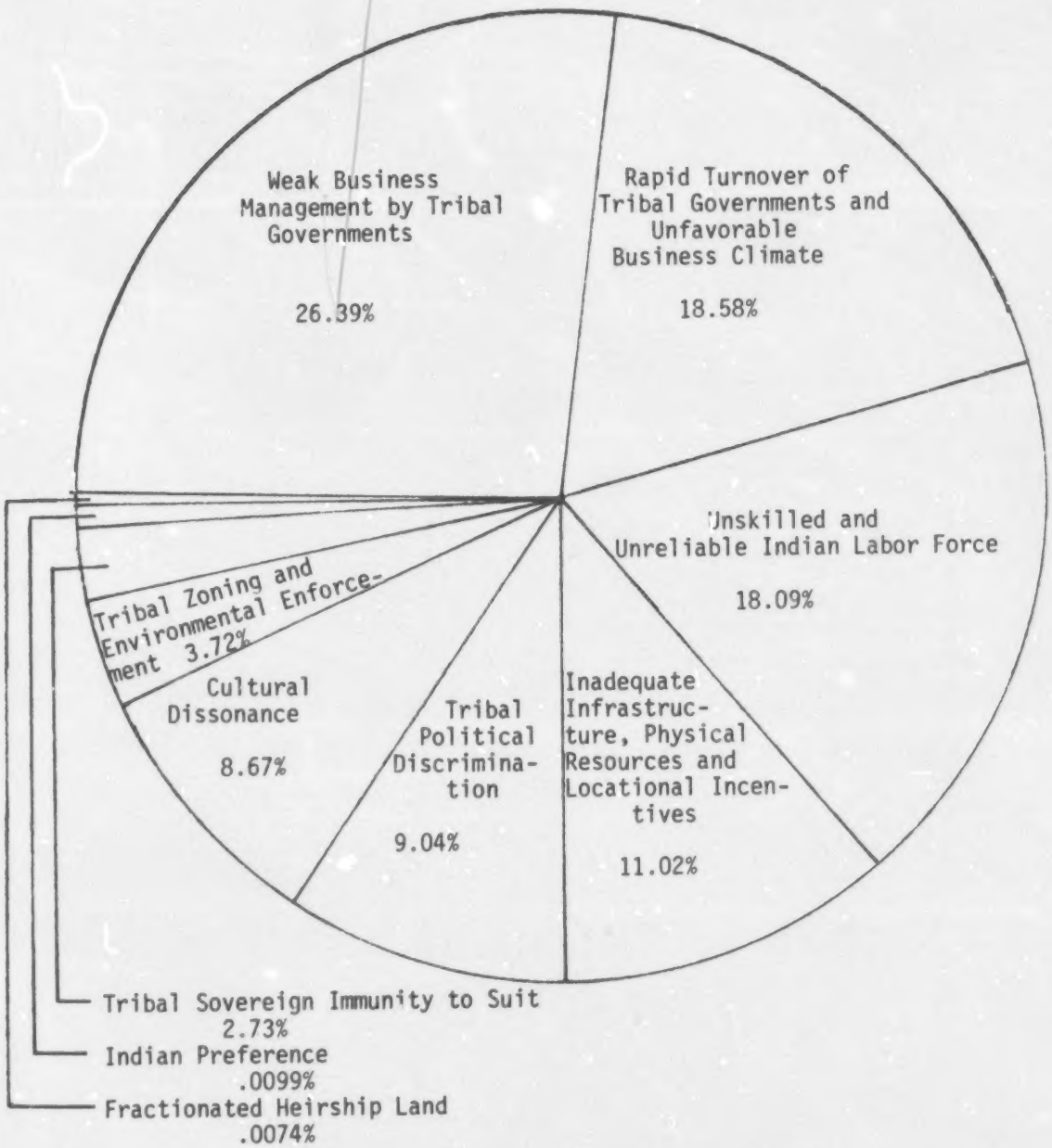
9. Indian Preference in Employment.....p.26

10. Fractionated Heirship Land.....p.27

COMPOSITION OF TRIBAL OBSTACLES

TO

INDIAN RESERVATION ECONOMIC DEVELOPMENT



TRIBAL GOVERNMENT OBSTACLES TO INDIAN RESERVATION ECONOMIC DEVELOPMENT

1. Weak Business Management by Tribal Governments — Freq. 213

The Commission finds that weak business management by tribal governments contributes to the failure of those businesses. There are a number of key differences between businesses and tribal governments. The table below identifies some of the critical distinctions:

TABLE 1.
KEY DIFFERENCES

Private Sector	Tribal Government
Profit Driven	Social Welfare Driven
Business Planning	Big Picture Planning
Cost Control	Budget Based Proposals
Entrepreneur, CEO	Tribal Bureaucracy
Reward System	Patronage System
Product Competition	Organization Competition
Focus on Needs	Focus on Rights
Independent	Dependent

Tribal governments have different goals from businesses. Tribally run businesses tend to focus on employment rather than profits as a goal. Instead of concentrating narrowly on the needs of a business, they tend to focus on economic development planning. As a consequence, businesses tend to be overbuilt and then sold to the federal bureaucracy in the form of budget based proposals. Proposals, rather than business plans, are generated to justify subsidies and grants for projects which would not be able to pay for themselves out of projected sales revenues. Tribal business bureaucracies do not identify managerial talent. They compete with individual entrepreneurs or fail to secure expert assistance before they build a budget based project on paper. Many tribal staff are woefully inexperienced in business and are ill-equipped to manage, evaluate, or counsel tribes in business planning. Their inability to develop proper business plans which show projected sales and rates of return is a major barrier to securing private investment. Financial institutions are more concerned with repayment plans as a basis for making a loan than they are with foreclosing on collateral. The "mind set" of budget-based organizations runs deep. Tribal bureaucracies market overbuilt proposals which embody political agendas for employing large numbers of Indians rather than focusing on the needs of individual Indian businessmen.

Businesses employ reward systems which pay for performance. Tribal government businesses utilize a patronage system where there is an indirect relationship between pay and funding since employment is frequently subsidized by tribal income or federal subsidy. In business, products compete in terms of quality and price. In tribal governments, bureaucratic organizations compete for funding and influence.

While businesses focus on the specific needs of businesses, tribal governments' focus is diffused. While businesses seek to build an asset base and a cash flow, tribal governments seek "instant" large scale employment projects and "Marshall Planning."

Businesses run by individual Indians are generally smaller but more successful than tribally run businesses. They are managed by Indians who know and are devoted to their businesses. There is not a lack of talent or potential for entrepreneurs on Indian reservations. There is however an active undervaluing of this talent.

In part the failures of tribal government businesses can be ascribed to an over-dependenc on federal programming which focuses on government scaled planning. Tribes merely mirror the needs of the federal bureaucracy. In part, failures can be ascribed to an undervaluing of Indian entrepreneurs who may be viewed, in cultural terms, as having a narrow-minded preoccupation with making money. Tribal ownership of most property on Indian reservations enables tribes to fall into the trap of big picture development, and high unemployment rates mitigate against permitting tribal assets to be used more profitably by individual Indian entrepreneurs who may be seen as profiting at the expense of others.

2. Rapid Turnover of Tribal Governments and Unfavorable Business Climate Freq. 150

The instability of tribal governments is an obstacle to Indian reservation economic development. Tribal governments are characterized by high turnover of politically elected council officials, factionalism among constituencies, infighting, and distrust. Political instability has a number of adverse effects upon the business environment. Tribal governments have frequent changes in policy, direction, investment, and commitment. Business agreements negotiated by previous tribal councils are changed or abrogated. The fact that many tribal office holders lack business experience adds another dimension to the problem of high turnover. Management of tribal businesses suffers from abandoned commitments. No tribal commerical, corporate, revenue, or property laws are in place to fill the vacuum of uncertainty which political instability creates. Political instability undermines business planning and undercuts development of a healthy reservation private sector. These factors contribute to the development of an unfavorable business climate for private sector investment.

When subsidy-based business projects fail to generate the revenues predicted by tribal proposals and when maintaining employment levels in unprofitable, tribal businesses create a drain on tribal revenues. Tribal councils are then unable to distribute employment rewards to their supporters.

Tribal governments are destabilized by the failure of government run business. When tribal government businesses cannot produce political rewards for patronage and constitutency agendas, the office holders who built the budget based white elephants are voted out of office. Instead of patiently supporting individual Indian entrepreneurs to build from the ground up, tribal governments focus on a quick fix by intensifying their dependency on the federal government. Implicit to the destabilization process is a confusion over roles. Tribal governments mistakenly see themselves, rather than individual Indian entrepreneurs, as developers and managers of business.

3. Unskilled and Unreliable Indian Labor Force Freq. 146

Inferior education, high drop-out rates, and lack of labor markets are factors which contribute to the pool of unskilled Indian labor. Past federal training efforts, such as CETA, focused on training individuals through employment in tribal government. Since tribal government labor markets are dependent upon outside

grants-in-aid, CETA training for public sector employment had generated nearly 25% of Indian reservation employment in non-business activity. Labor was also trained for employment in tribal government run businesses which were not capable of maintaining that employment without further subsidy.

Recognizing the weaknesses of demand in private sector labor markets, the federal response was to create programmatically an artificial demand for labor in the tribal public sector by focusing on tribal "government" employment and training.

Lack of skills, chronic unemployment, absence of individual opportunity, and federally supported systems of tribal patronage contribute to an environment characterized by social welfare dependency, broken families, low self-esteem, alcohol and drug dependency, high delinquency and crime rates, ill health, suicide, and despair. The reliability of Indian labor is adversely affected by the negative environment which subsidized dependency has created. Reliability is further exacerbated by inadequate roads and systems of reliable transportation on Indian reservations.

4. Inadequate Infrastructure, Physical Resources, and Locational Incentives Freq. 89

There is a perception that inadequate infrastructure, inadequate natural resources, and geographic isolation are obstacles to Indian reservation economic development. Past federal economic development efforts concentrated on public facility grants and loan based construction of infrastructure such as industrial parks, tourism complexes, tribal administration buildings, water and sewer systems, access roads, and school, housing, and medical facility construction. Since most public works construction was 80-100% grant, public works was a popular program. Of the approximately 40 industrial parks built on Indian reservations, few have significant utilization levels. The presence of empty industrial parks, overbuilt tourism complexes, tribal administration buildings, improved roads, subsidized housing, and enhanced utilities did not succeed in attracting industry. In fact depreciation, maintenance, and payment default costs require more grant support. Moreover, the presence of abundant natural resources is no guarantee of economic success. The Council of Energy Resource Tribes experiences high unemployment as well.

While inadequate infrastructure and scarce natural resources are not beneficial factors influencing economic development, they are not insurmountable obstacles. Infrastructure and natural resources are seen as incentives that attract business. Businesses, however, are attracted by profitability. Most businesses in the United States are not natural resource dependent and most would not require any more infrastructure than presently exists on most Indian reservations.

Isolation and distance to markets are more serious obstacles, but only for transportation sensitive goods and services. There are many Standard Industrial Classification system industries which, at appropriate scales of production, could operate profitably on Indian reservations. Other factors, such as labor resources, competitive wage rates, and attractive financing are more influential site location factors.

5. Tribal Political Discrimination Freq. 73

Both Indians and non-Indians complain of political discrimination against them by tribal governments and by tribal courts which are arms of tribal governments. Access to tribal physical resources, to the benefits of tribally managed programs, and to tribal employment is considered to be unfair by many Indians. Decisions rendered by tribal courts, which are controlled by tribal councils, are also perceived to be unfair by Indians and non-Indians.

Businesses see uncertainty in situations where law is subordinate to the whims of tribal councils, especially where tribal governments are destabilized by frequent political turnover of elected office holders. There is a fear that tribal courts will not protect the property rights of non-Indians by according them due process of law or protecting individual non-Indian civil rights. Uncertainty increases risk and risk increases the cost of doing business on Indian reservations.

Tribal government patronage systems and the politicization of tribal courts are significant obstacles to Indian reservation economic development since they discriminate unfairly against individuals and businesses. A lack of sovereign responsibility deters investment.

6. Cultural Dissonance Freq. 70

Intercultural complications affecting economic development on Indian reservations exist for Indians and non-Indians alike. There are problems in mutual understanding between the dominant culture and Indian culture. There are also cross-cultural issues among Indian people since there are almost as many Indian cultures as there are tribes. This cultural diversity makes it difficult to generalize among tribes in their approach to economic development. Values favoring the conservation of resources and equality in the distribution of tribal income are noteworthy in the Indian economic development literature. Consensus on resource use and distribution of income become important local issues since each tribal member has a distributive interest in tribal wealth.

The World Bank has encountered tribal issues in its devlopment work overseas. The Bank's consideration of the needs of tribal people may have some applicability to the situation on American Indian reservations. In "Tribal Peoples and Economic Development", the Bank points out that historically tribal minorities in all parts of the world have suffered for centuries from the adverse effects of expansion from outside into territories that were formerly entirely tribal and once supported large tribal populations. Despoliation of their renewable resources often severed such people from their economic and social bases and relegated formerly self-sufficient societies to the lowest economic level of the national society. Dominant societies usually sought to impose their value systems, socioeconomic and cultural patterns and organizations, and language on tribal groups.

Formerly, this was generally accepted as an inevitable by-product of development. Tribal people were expected to drop their own culture and adopt that of the dominant society as the cost of modernization. Negative consequences of inadequately designed and implemented development efforts were justified as being painful, but necessary, side effects of a process that was for the greatest good of the greatest number. However, the destruction of weaker societies by stronger ones corresponds

to a view of social evolution that is impossible to justify both legally and ethically.

Experiences from American Indians and from traditional cultures around the world show that self-determination regarding cultural values and change can be combined, albeit slowly and with difficulty, with self-determination regarding economic development to the benefit of all concerned. Tribal groups can make valuable contributions to the wider society as well as strengthening their own societies. Also, tribal populations cannot continue to be left out of the mainstream of development. However, as in other areas of self-determination, tribal people should set their own pace to become as fully participatory in economic development as other parts of society.

Decision making by Indians and non-Indians needs to take into account that the absorptive capacity of tribal populations for development and change may be lower and take longer than that of other populations in the society. The very concept of time itself may be different for different groups at different periods. To business, time is money. To tribes, time may be consensus. The cumbersome process of arriving at a consensus which is subject to change is not well understood by a dominant culture. Failing to recognize that it takes time to reach a consensus is a failure to understand tribal political culture. Without consensus, actions by tribal councils are frequently overturned by new tribal councils because a true consensus was never reached.

Business planners, economic developers and government officials, in order to deal effectively with cultural pluralism and cross-cultural communications, need to recognize that solutions need to be tailored to the specific circumstances of each tribe and that people be given the opportunity to participate. Freedom of choice is worthless without understanding the implications of the given alternatives and the ability to choose between them.

7. Tribal Zoning and Environmental Enforcement — Freq. 30

The authority of a tribal government to enact comprehensive or partial zoning ordinances restricting different types of reservation based economic activity is an obstacle when that authority is abused. When an area is rezoned and businesses are adversely affected, it is a problem. When areas are zoned without regard to economic considerations, business is deterred. When reservations have large concentrations of non-Indian population and significant non-Indian land ownership, there is fear that tribal zoning will be unpredictable. Tribal zoning which is at variance with surrounding county zoning creates problems with waste disposal, law enforcement, fire protection, highway maintenance, etc.

Application of standards which are more stringent than National Environmental Protection Act standards are standards which impose greater costs on business. At the same time, the failure to exercise proper standards can result in damage to the environment which is harmful to competing resource users who must work with lands whose productivity has been lowered.

8. Tribal Sovereign Immunity to Suit — Freq. 22

Indian tribes are held to possess attributes of sovereignty. One of these attributes is sovereign immunity to suit. Of the 487 federally recognized Indian tribes

and Alaskan Native groups, 134 (27%) have Indian Reorganization Act corporate charters which permit them to sue and be sued. Generally speaking, suits against a tribal sovereign have only been permitted where there were tribal or Congressional waivers of sovereign immunity and the remedy did not involve tribal property held in trust.

Sovereign immunity may be raised by tribes as a bar to suits brought against them by their own members or by non-members in cases involving civil rights, property, contracts, or a dispute of any kind.

Sovereign immunity to suit creates risks for businesses who engage in economic activity on Indian reservations since it makes actions by tribal governments immune from challenge and exposes investment to loss where a tribe decides to deny a claim by raising the bar.

9. Indian Preference in Employment — Freq. 8

Section 12 of the Indian Reorganization Act, 25 U.S.C.A. sec. 472, provides:

> The Secretary of the Interior is directed to establish standards of health, age, character, experience, knowledge, and ability for Indians who may be appointed, without regard to civil service laws to the various positions maintained, now or hereafter, by the Indian Office, in the administration of functions or services affecting any Indian tribe. Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.

A consent decree in Tyndall v. United States, No. 77-0004 (D.D.C. Apr. 22, 1977), extended these hiring preference requirements to the Indian Health Service. Moreover, the Buy-Indian Act and Indian Self-Determination and Education Assistance Act create Indian preferences in contracting. In Morton v. Mancari, 417 U.S. 535 (1974), the Supreme Court held that Indian preference was based on the unique legal status of Indian tribes as politically recognized entities. It held that Indian preference did not constitute "racial discrimination" since it was not a "racial preference," but rather a political preference.

When tribal governments impose their own Indian preference laws on businesses located within reservation boundaries, they impose higher labor costs. This is particulary true when there is an absence of trained individuals for specific occupations. Indian preference as a legal requirement is viewed as a disincentive to private investors.

Indian preference however, does not extend to business activities which are unionized and covered by the National Labor Relations Act. Navajo Tribe v. NLRB, 288 F.2d 162 (D.C. Cir. 1961), held that a tribal government ordinance violated the NLRA where governmental action interfered with collective bargaining activity.

10. Fractionated Heirship Land

Freq. 6

Fractionated heirship land is land which has two or more undivided interest owners. The allotment acts set aside tribal lands for allotment to individual Indians for farming and ranching. The size of the allotments varied according to their intended uses. Allotment size contemplated subsistence at nineteenth and early twentieth century levels of technology. Fractionated heirship land is a problem which generates many complaints about financing and leasing.

Approximately 90% of all Indian trust land in the lower 48 states is farming or ranch land. The Bureau of Indian Affairs estimates that of the 9,989,041 allotted acres of land, 75% of it is in an undivided, fractionated state. Since real property averages about 73% of average total farm investment, it is clear that the average Indian farmer or rancher has less land to work with today, at present levels of technology, than did his ancestors whose lands were not fractionated.

Having less real property with which to work, farmers and ranchers turn to federal programs for favorable financing to pay for leases of additional land and the machinery, equipment, fertilizer, etc., which more capital intensive farming or ranching require. Much attention is focused on the Farmers Home Administration, its Indian Land Acquisition Program, BIA Revolving Credit and other sources of federal support.

The root cause of many Indian farmer and rancher problems, however, lies in the inequitable distribution of Indian lands and in the synergic system of tribal and BIA leasing which work to the disadvantage of farmers and ranchers. Many Indian farmers and ranchers could be "saved" if Indian tribes studied serious land reform. Individual farmers and ranchers are undercapitalized from the start, yet their tribes hold nearly 90% of the farming and ranch lands which they lease to Indians and non-Indians at rates which are designed to support the tribe, not the individual.

BUREAU OF INDIAN AFFAIRS OBSTACLES

TO

INDIAN RESERVATION ECONOMIC DEVELOPMENT

BUREAU OF INDIAN AFFAIRS OBSTACLES TO INDIAN RESERVATION ECONOMIC DEVELOPMENT.....p. 28

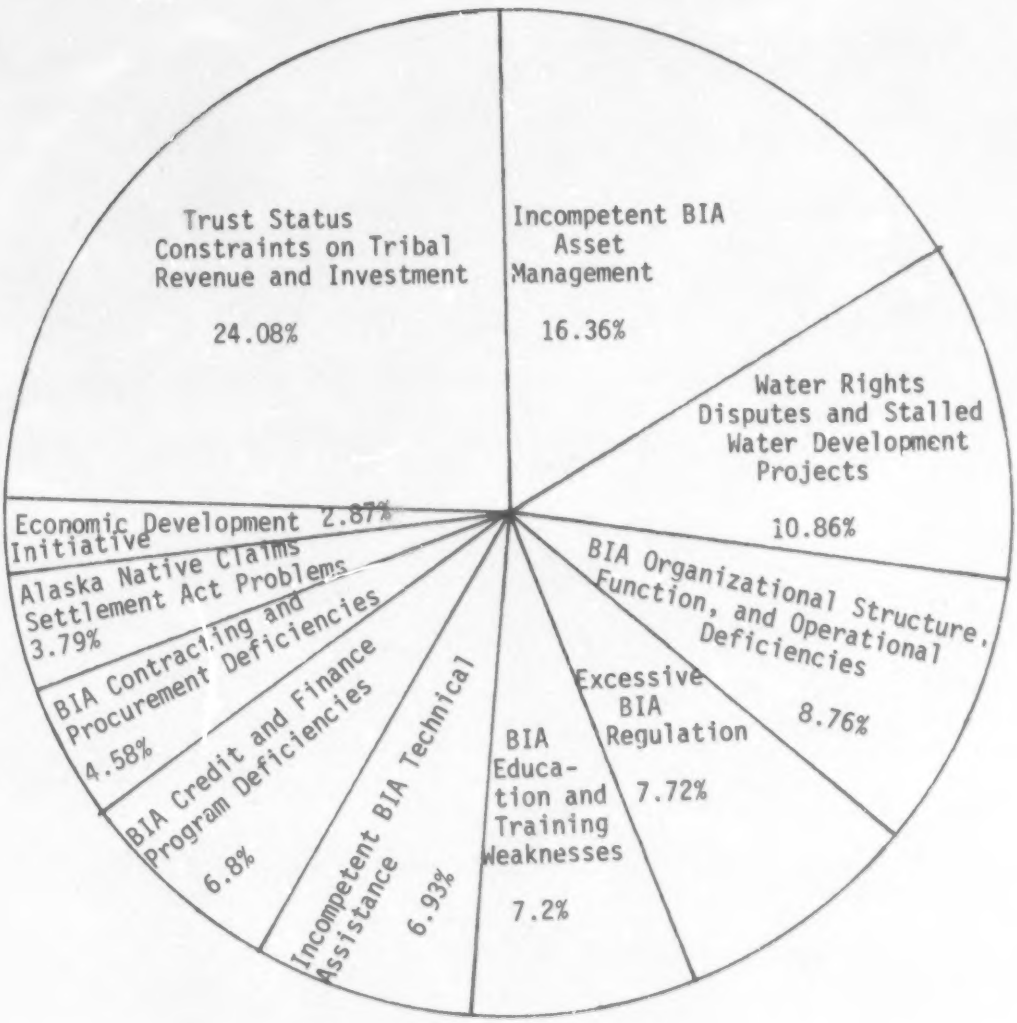
Composition of BIA Obstacles to Indian Reservation Economic Development Graph.....p. 30

1. Trust Status Constraints on Tribal Revenue and Investment.....p. 31
2. Incompetent BIA Asset Management.....p. 31
3. Water Rights Disputes and Stalled Development Projects.....p. 32
4. BIA Organizational Structure, Function, and Operational Deficiencies.....p. 32
5. Excessive BIA Regulation.....p. 34
6. BIA Education and Training Weaknesses.....p. 34
7. Incompetent BIA Technical Assistance.....p. 35
8. BIA Credit and Finance Program Deficiencies.....p. 35
9. BIA Contracting and Procurement Deficiencies.....p. 36
10. Alaska Native Claims Settlement Act Problems.....p. 37
11. BIA Economic Development Initiative.....p. 38

COMPOSITION OF BIA OBSTACLES

TO

INDIAN RESERVATION ECONOMIC DEVELOPMENT



1. Trust Status Constraints on Tribal Revenue and Investment — Freq. 184

Trust status constraints operate as an obstacle to Indian reservation economic development in a number of ways since these constraints constitute a complex framework of regulatory control over Indian assets. The constraints are authorized in treaties, statutes, regulations, procedures, and manuals governing specific resources such as land, minerals, timber, water, hunting and fishing, and trust funds. The trust status of Indian resources is not just an obstacle to economic development from the perspective of collateral for financing. Bureaucratic regulation and control of Indian asset management is also a problem.

Trust status means that Indian tribes lack the same property revenue base that local governments have. It also means that capital which they already have cannot be flexibly used for tribal investment. Trust status freezes tribal assets in a pre-capitalist state.

2. Incompetent BIA Asset Management — Freq. 125

Since the Bureau of Indian Affairs has not completed soil classification, timber, mineral, or water inventories, it cannot possibly know what resources it is managing. Without soil classification, it is not possible to know what is the proper or best use of land. To lease lands and to provide for so many animal unit months (AUMS) per acre, when the capacity of that land is not known, is to place the asset in risk of waste. Without completed timber management plans which include comprehensive forest inventories, it is impossible to know what the productivity is of a forest. Sustained-yield management cannot exist without a knowledge of the basic resource. Annual allowable cuts are based more on past experience with mismanaging forests than they are on a knowledge of the resource. In 1984, the 6 million acres of Indian commercial forest lands were managed with a budget of $27 million and 786 full-time-equivalent (FTE) employees. In comparison, Weyerhaeuser manages about the same number of commercial forest acres, but with significantly more resources committed to the task. Similarly, mineral inventories have not been completed for all Indian reservations, nor does the Bureau of Indian Affairs know how many acre feet of Indian water it is supposed to be protecting. Without a knowledge of basic natural resources, the BIA cannot succeed at resource management nor resource protection.

An inadequate resource data base makes it difficult to develop management plans and to budget properly. Instead of managing, the Bureau regulates. It exercises a monopoly power over leasing which either interferes with tribal decision making, or imposes intolerable costs on businesses which experience long delays in bureaucratic approval. Many personnel are not competent in their jobs and there is a dearth of qualified specialists in natural resource areas.

Tribes experience difficulty with BIA leasing policies and procedures, land servicing, appraisals and surveying, bureaucratic interference, bureaucratic layering, and delays with required approvals, all of which increases the costs of doing business. Tribal resources are not being managed, they are being overregulated, and the overregulation does not work to the benefit of tribes or Indian individuals. Estimates are that nearly one-half of all leases approved by the Bureau are out of compliance.

Incompetent management is not limited to natural resources, it extends to tribal trust funds. While BIA investment activity receives high marks, the accounts reconciliation side for returns to investment approaches trust irresponsibility. For at least the last six years, the BIA has refused to follow through on General Accounting Office findings and recommendations. The GAO seriously doubted that trust fund management could be improved by the BIA's choice in the purchase of a $15 million computer. Without the proper accounting software to reconcile returns to individual Indian money accounts, the BIA cannot expect to produce balanced accounts. Moreover, pilot projects which experiment rather than rectify accounting system problems, cannot overcome the systems deficiencies, particularly when there has been no financial audit of each account that is out of balance.

Furthermore, trust funds management is not organized to be responsive to tribal investment goals. Testimony indicated that it takes from 30-45 days to effect an investment transaction. Tribes are unable to utilize their trust funds by depositing them locally, using them for leverage or even as equity.

3. Water Rights Disputes and Stalled Development Projects Freq. 83

Rights to the use of water have been reserved by Indian tribes through treaties with the United States, and reserved by the United States for Indians through executive orders and congressional acts. Water rights thus reserved were never comprehensively quantified by the trustee Bureau of Indian Affairs. As a consequence, the Bureau of Indian Affairs historically has been ignorant of the quantities of water it was to protect and manage.

As a result of its failure as trustee, the Bureau of Indian Affairs is the cause of most water litigation and water development problems; this is a disadvantage to Indian reservation economic development. The failure to properly document Indian water resources has meant that water projects were not built when and where they could have been. Moreover, non-Indians suffer the injustice of first having been permitted to use Indian water and then, after having invested in its use, being deprived of that use and consequently their investment.

Nearly 54 water rights disputes are in litigation, and nearly 100 Indian water projects are either uncompleted, pendente lite, or otherwise in a state of disrepair. The trustee has therefore settled upon costly litigation as the method for water resource allocation instead of quantifying Indian water rights and then protecting those rights through water development, or through marketing of water, with payments going to tribes. (For further discussion, see Appendix: "Tribal Water Rights Issues: Prospect for Economic Development.")

The present process of negotiated water rights agreements is an important step toward identifying Indian water rights. Without water rights agreements, excessive litigation will continue to impose high costs on tribes, individual Indians, non-Indians and businesses. Water development projects which are already deteriorating will become unusable.

4. BIA Organizational Structure, Function, and Operational Deficiencies Freq. 67

The Bureau of Indian Affairs operates in a schizophrenic manner because it has conflicting goals. It is charged with the responsibility of managing all Indian affairs and it is charged with Indian self-determination which seeks to place the management function at the local tribal level. An organization cannot

carry out goals which are in conflict with one another.

The Indian Self-Determination and Educational Assistance Act of 1975 (P.L. 93-638) intended that management of Bureau programs and functions be transferred to Indian tribes. In the last 10 years of Indian self-determination, the Bureau has managed to contract Bureau programs and functions to tribes at the rate of 1.5% of budget per year. With generally increasing budgets, increased contracting has not resulted in significant increases of P.L. 93-638's share of the budget. Regulations written by the Bureau make it extremely difficult to contract programs and functions which are not social, educational, or welfare oriented programs. Management functions associated with lands and natural resources have been retained by the Bureau. Moreover, the General Accounting Office found that Indian employees within the Bureau of Indian Affairs actively resist contracting of functions to tribes because the federal employees fear loss of their jobs.

The Critical Path to Failure Analysis of federal programs and administrative systems found a great number of organizational, functional, and operational deficiencies within the Bureau of Indian Affairs. A list of deficiencies is set forth below:

- Lack of top management direction
- Inept decision making processes
- Unwillingness of area and agency staff to implement the intent of the Indian Self-Determination Act
- Fear of losing jobs to self-determination
- Failure to modify structure to meet needs of Indians
- Lack of Congressional support for reorganization
- Failure to reduce agency size or eliminate area offices
- Ineffective line and staff authorities
- Failure to hold staff accountable
- Unwillingness of area offices to permit tribal autonomy
- Unwillingness to accept tribal economic development planning
- Lack of responsiveness to tribes
- Ineffective personnel policies and procedures
- Failure to remove incompetent BIA staff
- Ineffectiveness of Indian preference
- Lack of expertise by personnel in technical areas
- High staff turnover
- Overcentralization of education field staff

Beyond these deficiencies there are additional problems with the financial management system, the information resource management system, banded budgeting system, contracting and procurement system, and overlapping authorities between program management and administrative management. These systems are either in a state of deterioration or mismanagement. The fact that the Bureau could not certify that its systems were in compliance with the Federal Financial Managers Integrity Act, nor with OMB A-123, indicates that a serious state of asset risk exists throughout the organization.

After reviewing 75 studies on the Bureau of Indian Affairs, conducted over a 25 year period, the American Indian Policy Review Commission (AIPRC) found:

> A review of the findings of each of these studies points to problems in administration of the Bureau programs which are directly related to the

organizational structure of the Bureau. The layered system of administration which exists in the Bureau means that out of every dollar targeted for Indian programs, the costs of administration for each level of Bureau organization must be extracted first. Estimates of the percentage of each Indian dollar which is used to administer the BIA organization range from 78-90 percent. After administrative costs for program operation have been extracted at each level, there is only a small amount of funds left to operate a program at the reservation level, often too small an amount to effectively deliver services.

The conditions that existed in 1974, when the AIPRC was established, are not much different today. The Commission has found that approximately 48% of fiscal year 1986's budget request will be directed toward supporting the 14,000 BIA employees' personnel and administrative costs! An undetermined additional amount will be consumed to underwrite BIA travel and operating expenditures at the central, area and agency level.

5. Excessive BIA Regulation — Freq. 59

Excessive regulation, or "Red Tape", was repeatedly identified in the Commission hearings as an obstacle to Indian reservation economic development. Representatives of the oil and gas industry criticized the unresponsiveness of the Bureau of Indian Affairs, its inconsistent procedures, and the delays which its involvement produced. The costs of dealing with the bureaucracy are so high as to be prohibitive. There is a reluctance throughout the energy industry to deal with Indian reservations. This reluctance also exists for commercial bankers who require lending guarantees from the Bureau of Indian Affairs. The regulation and time delays are such that fishing loans for the herring season in May are made in August, and fishing loans for the salmon season in July are made in September.

Inconsistent policies, time-consuming procedures, different interpretations among bureaucratic layers, need for numerous approvals, and paperwork burdens raise the cost of doing business with Indian tribes. The degree of regulation is so great that business investment is actually deterred.

6. BIA Education and Training Weaknesses — Freq. 55

Under the Indian School Equalization Program, 42,535 Indian students were served by 210 BIA or BIA-contract educational facilities in 1983, at a cost of $205,323,245. This reflected a per pupil cost of approximately $4,827. Only 61, or 29% of these facilities were under contract to Indian tribes or Indian organizations. What is notable from the 1986 budget request justification is that proposed education initiatives do not include enhanced Self-Determination Act contracting of schools to Indian tribes. Moreover, it projects a decline in the number of contract schools from 61 to 57.

Under the Special Higher Education Program, there were 270 Indians enrolled in critical professions such as law, medicine, natural resources & related fields, engineering and business administration. About 14% of the students were enrolled in natural resources and related fields, engineering, and business administration. More than 44% of the students were enrolled in the law program, which for the period 1970-1984, had an average completion rate of 47%, in contrast to the

law, without any showing that this field is important or effective. With a success rate of 47%, 63 Indian law students will not complete their course of study. At $9,283 per student, $584,829 will be spent in a cost-ineffective manner. These funds could have supported 90 Indian students in all other graduate programs where the completion rate is higher and where the professions are more adaptable to Indian business development needs. Similarly, BIA support for the Institute of American Indian Art, Haskell Indian Junior College and Southwestern Indian Polytechnic Institute average $4,500 per student. However, when the overhead for operating these institutions is spread over the student population, it costs much more for education there than in all other graduate programs. The BIA fails to invest limited educational resources in an effective manner. Much greater numbers of Indian youth and adults could be educated or trained if attention were paid to costs and effectiveness considerations.

In 1984 approximately 28% of the BIA budget was contracted under P.L. 93-638. Of the 72% of budget not contracted, many programs and functions could be contracted. Yet, BIA only budgeted $1.6 million for training and technical assistance. Moreover, while 73% of all reservations and villages have 500 or fewer resident members, small tribes receive only 20% of the self-determination budget for core management. Without better budgeting for training and technical assistance, and for small tribe core management, Self-Determination Act contracting cannot succeed. Furthermore, the absence of a statistically derived overhead cost rate continues to deter tribal contracting, since tribes have fewer resources to carry out contracted programs than the Bureau has, when such overhead rates are not included.

In the area of vocational training and job placement, the BIA spends an average of $11,500 per student trained and placed in employment, as compared to $1,147 per Indian placed through its direct employment program.

It is apparent that BIA conducts no analysis of its programs in terms of education and training outcomes. Nor does it make effective efforts to contract education and training program functions to tribes. Budget justifications succeed at budgeting for continued BIA management.

7. Incompetent BIA Technical Assistance — Freq. 53

Bureau of Indian Affairs technical assistance is either inadequate or incompetent in the opinion of many witnesses who testified before the Commission. In technical fields such as forestry, mining, fishing, and agriculture, technical assistance is inadequate. In fields dealing with credit, finance, or business, it is incompetent. In fields dealing with Bureau programs or administrative systems, technical assistance is inadequate, incompetent or unresponsive to tribal needs.

The BIA's institutionalized point of view about business or business development intrudes or interferes with tribal planning and decision making. Frequently, advice given by private business to tribes is overruled by the "technical expertise" of Bureau employees who have no experience or knowledge in business principles or management.

8. BIA Credit and Finance Program Deficiencies — Freq. 52

A number of credit and finance barriers were identified to the Commission by wit-

nesses. Management and technical assistance activity is provided for in the Indian Finance Act and the Indian Loan Guaranty and Insurance Fund, yet the BIA fails to provide adequate technical assistance to potential Indian borrowers, or to current borrowers. The BIA uses appropriations for loans to Indians to support its administrative costs, carrying an overhead far in excess of what a financial institution of the same size and portfolio would have.

Of the $85,506,500 in the Revolving Loan Fund, $50,749,500, (@ 60%) was loaned to tribal enterprises, in comparison to $11,407,500 (@ 13%) to individual Indians. Financial assistance is biased in favor of tribal enterprises and does not provide the kinds of support individual business requires. Restrictive "on or near" a reservation criteria for loans, absence of bonding authority, lack of management and technical assistance, exclusion of tribal members whose tribes have credit programs, lack of information about lending programs, poor screening of applicant tribes, and incredible time delays all work to undermine the effectiveness of BIA credit and finance programs.

Independent cooperatives and associations received only $3.5 million in loans, approximately 4% of the total outstanding. Practically no support is provided to independent business associations. Furthermore, considering the high degree of land ownership fractionation and the checkerboarding of Indian reservations, only $4.8 million (@ 5%) has been loaned for land acquisition.

The Critical Path to Failure Analysis of federal programs and systems indicated that BIA credit and finance obstacles included: lack of consistency in interpretation of guidelines and policies, poor turn around time for credit applications; lack of knowledgeable reviewers, lack of specialized staff, $100,000 credit limitation, failure to differentiate first time borrowers from successful borrowers, equity requirements, and poor access to the private banking system.

9. BIA Contracting and Procurement Deficiencies — Freq. 35

Buy-Indian contract deficiencies by the Bureau of Indian Affairs operates as a major impediment to Indian businesses. Buy-Indian Act regulations require that an Indian organization be 100% owned and controlled by Indians. Such a requirement limits the ability of Indians to obtain capital, management and technical expertise by offering participation to private investors. The Small Business Administration and other programs only require 51% ownership by minorities. Instead of helping individual Indians to do business, the BIA wrote highly restrictive regulations.

In its efforts to comply with OMB A-76 contracting of commercial and industrial activity, the BIA has not provided that contracting of such functional activities be done through the "Buy-Indian" or P.L. 93-638 process. While cost of margin estimates may be developed through the normal A-76 process, that process should not be operated in a manner that deprives Indians of contracting opportunities.

Many witnesses testified that the Bureau of Indian Affairs actively avoided using the Buy-Indian Act in its procurements. Other complaints focused on failure to properly utilize the Buy-Indian Act for subcontracting to Indian construction contractors for construction projects made possible by transfer of Surface Transportation Act funds to the Bureau of Indian Affairs.

Burdensome bidding procedures, restrictive regulations, unrealistic performance bonding requirements, inflexible indirect cost rates, BIA's exemption from the Prompt Payment Act, and failure to support Indian preference, were frequent complaints.

10. Alaska Native Claims Settlement Act Problems Freq. 29

The Alaska Native Claims Settlement Act of 1971 (ANCSA) was intended to resolve the land rights of Alaska's eighty thousand Native inhabitants. The Act created a mechanism for Native selection, administration, development and alienation of forty million acres of land, and expenditure, investment, and distribution of an Alaska Native Fund of $462.5 million in Congressional appropriations and $500 million in oil royalties.

Under ANCSA, Natives are permitted to enroll and be issued stock in one of thirteen regional corporations and in one of more than two hundred village corporations, according to their place of residence or origin. The corporations are delegated the task of selecting for their own use, lands in twelve geographic regions and in the vicinity of Native villages. In addition, the corporations are given the responsibility for administering their portions of the Alaska Native Fund, including distributing funds to Native stockholders.

According to the terms of ANCSA, Alaska Natives are entitled to receive approximately forty million acres of federal public lands. A total of thirty-eight million is to be selected by the Native villages (twenty-two million) and the regional corporations (sixteen million). The remaining two million acres are set aside to provide for pending Native allotment applications, historic sites, and other purposes. Any of the two million acres not conveyed will be allocated to the regional corporations based on population.

An important feature of ANCSA is the fact that all lands selected by the Native corporations are patented in fee simple with few restrictions on alienation. Decisions by the Native corporations to lease or sell their land need not be reviewed by the Department of the Interior. There are, however, restrictions on the alienation of the stock in Native corporations.

In the course of its study, the Commission discovered numerous problems associated with the implementation of the Act. The principal problems identified centered around undue delays on the part of Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) in conveying, surveying, and issuing patents and easements. These bureaucratic failures adversely affect the rights and benefits of Alaska Natives under the Act and produce a detrimental effect on private sector development.

Another problem in implementing the Act's provisions concerns the BLM classification of navigable and non-navigable waterways. As an incident of statehood and pursuant to ANCSA, the State of Alaska has title to most lands beneath navigable waters. In the event of a controversy over classification, litigation in federal district court is necessary to resolve the matter. This is unduly burdensome to Natives in that title to a significant percentage of their acreage entitlement is dependent upon the administrative guess of BLM as to whether title to certain submerged lands did or did not pass to the State of Alaska and is therefore not susceptible to conveyance.

Problems have also arisen with regard to the determination of federal and state easements over Native allotments. The State of Alaska has protested over 5000 Native allotments as infringing on easements necessary for access to federal and state lands.

The BLM's delay in issuing conveyances has had an even more immediate negative effect on the financial well-being of Native corporations. Of 70 village corporations examined, 38 operated profitably for three years (1980-82) while 32 incurred before-tax losses during the three years. The primary reason for the losses was attributed to the delays in land conveyances. The corporations' financial difficulties, unless corrected, appear likely to worsen after 1991 when their lands become subject to taxation. Because the Act contemplated a twenty-year period of tax exemption, while the Native corporations were permitted to fully develop, it would be a cruel hoax if the land conveyances, to which they were immediately entitled, were to consume most, if not all, of that time frame. (Another prospective ANCSA problem identified by the Commission concerned the Act's post 1991 removal of restrictions on alienation of the stock of Native corporations. Concern was expressed that stock and control of Native corporations would fall into the hands of non-Natives after 1991.)

Passed in 1971, ANCSA extinguished the Alaskan Allotment Act of 1906. In 1984, however, approximately 9000 claims originally filed under the 1906 Act remained unresolved before BLM. The State of Alaska is now filing protests to the allotment process.

The bureaucratic delays caused by BLM and USFS have not only served to frustrate the expectations of Native people, but they have also inflicted direct and indirect financial losses on the Native corporations. Thirty-two Native corporations have reported legal expenses in excess of $50,000 each that were incurred in the course of administrative appeals and litigation over the implementation of ANCSA. Another forty-six reported that appeals and litigation have had an adverse impact, from moderate to very great, on their corporations' economic development. It appears that the bureaucracy's failure may lead to ANCSA's and the Native's as well.

11. BIA Economic Development Initiative — Freq. 22

Testimony was presented to the Commisison which indicated that the BIA Economic Development Initiative was poorly understood by those entrusted with its management. The Initiative offers to provide, as a grant, 25% of project development costs to a tribe if 75% of the remaining project development costs are contributed from tribal capital resources or from private sector capital sources. The 75% contribution requirement has created a number of disputes. Small tribes testified that the 75% capital contribution by them was prohibitive and complained that the Initiative is really focused on assisting major tribes. The 75% contribution requirement was recently interpreted to mean debt rather than equity in the case of private investors. Private investors are prohibited from contributing plants, equipment, or other capital towards the 75% unless there is a mortgage on the capital or other lien. Federal guarantees or other federal capital cannot be used toward the 75% contribution. The Initiative focuses on tribal enterprises, not on individual Indian business development.

Instead of developing rate of return criteria for investments, the BIA developed restrictive eligibility criteria favoring large tribes, contrived artificial distinctions between debt and equity participation by private investors, and employed the usual "on or near" reservation requirements. The Initiative was written as a grant matching program, not as an economic development initiative. Moreover, the program initiative has been characterized by the same unresponsiveness, lack of timeliness in project processing, and lack of business knowledge that exists in other BIA credit and finance programs. The Initiative is in danger of being operated as a discretionary grant program.

FEDERAL OBSTACLES
TO
INDIAN RESERVATION ECONOMIC DEVELOPMENT

FEDERAL OBSTACLES TO INDIAN RESERVATION ECONOMIC DEVELOPMENT.....p. 39

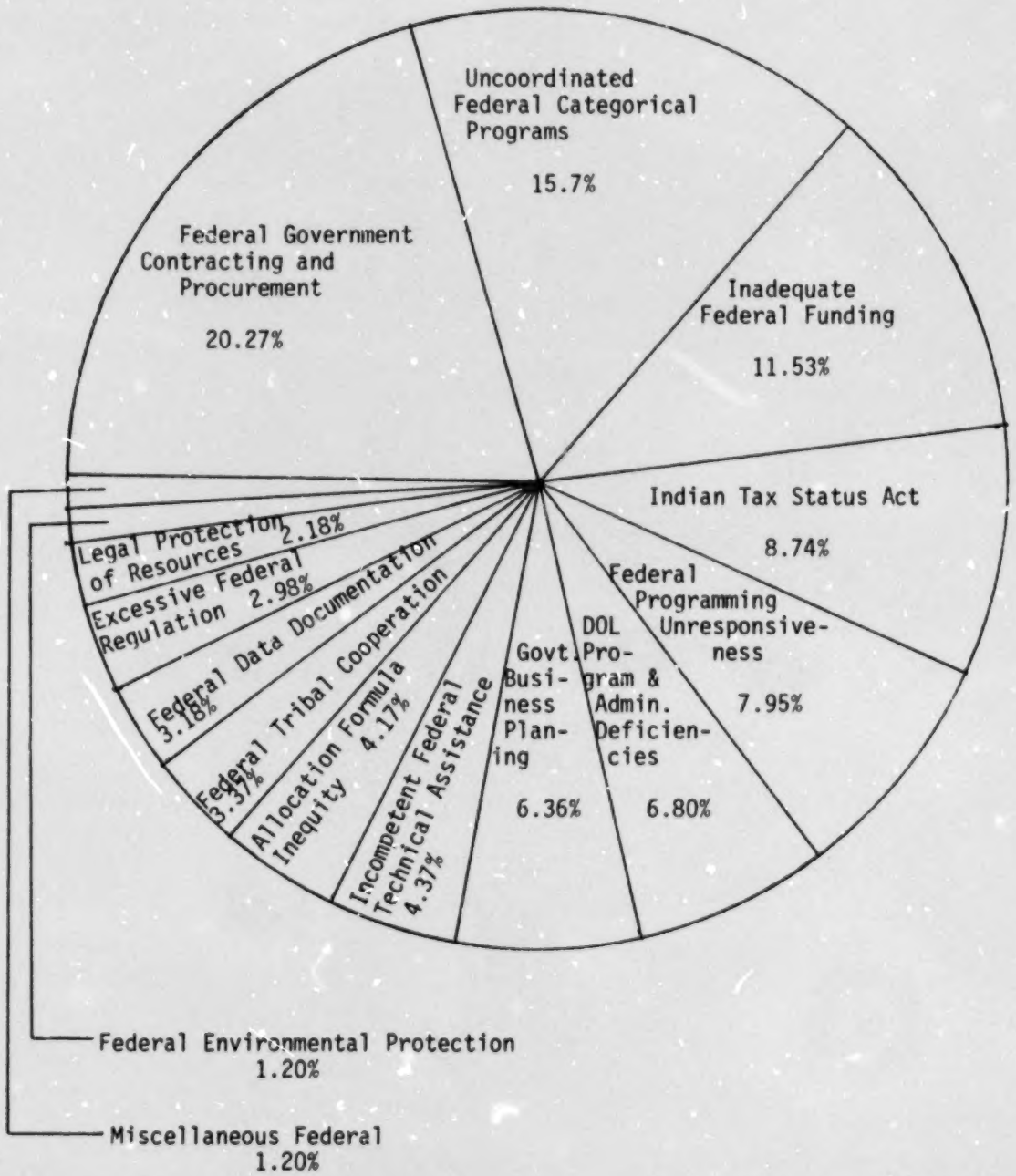
Composition of Federal Obstacles to Indian Reservation Economic Development Graph.....p. 41

1. Federal Government Contracting and Procurement Policy, Regulation, and Procedures.....p. 42
2. Uncoordinated Federal Categorical Programs.....p. 42
3. Inadequate Federal Funding.....p. 43
4. Indian Tribal Governmental Tax Status Act.....p. 43
5. Federal Programming Unresponsiveness.....p. 44
6. Department of Labor Programmatic and Administrative Deficiencies.....p. 44
7. Government Business Planning.....p. 44
8. Incompetent Federal Technical Assistance.....p. 45
9. Federal Allocation Formula Inequity.....p. 45
10. Federal-Tribal Cooperation.....p. 46
11. Federal Data Documentation.....p. 46
12. Excessive Federal Regulation.....p. 47
13. Legal Protection of Indian Natural Resources.....p. 47
14. Federal Environmental Protection.....p. 47
15. Miscellaneous Federal.....p. 47

COMPOSITION OF FEDERAL OBSTACLES

TO

INDIAN RESERVATION ECONOMIC DEVELOPMENT



1. Federal Government Contracting and Procurement Policy, Regulation, and Procedures — Freq. 102

Government contracting and procurement policies, regulations, and procedures are a significant obstacle to Indian reservation economic development. This is the major federal obstacle.

The Department of Defense Buy-Indian Act, authorized since Fiscal Year 1982, has not been effectively implemented. The memorandum of understanding signed with the Small Business Administration in November 1983 to certify 75 new Indian businesses as SBA 8(a) minority businesses has produced little success. Minority Business Development Agency technical assistance has not achieved significant results on Indian reservations. Federal procurement programs in departments and agencies have nonexistent or insignificant Indian business participation.

Some top federal administrators have expressed concern about making changes in procurement policies, regulation, and procedures to make access by Indian firms equal to those of other minority firms, but bureaucratic networks which favor other minority businesses over Indian businesses have impeded progress.

Inadequate subcontracting; exclusion of Indian "tribes" as eligible entities, exclusion of tribal enterprises not chartered under state laws, inconsistency among federal procurement regulations, cumbersome bidding procedures, inflexibility of SBA's certification of eligibility requirements, inadequate technical assistance, poor loan servicing and monitoring, Davis-Bacon wage rate requirements, and failure to set aside or support the setting aside of manageable procurements for Indian businesses are major barriers to Indian economic development.

Within the Small Business Administration there seems to be widespread inconsistency and confusion among field offices and higher levels as to who is eligible to be considered as an Indian, whether tribal enterprises are eligible, how to handle issues of federal, state or Indian-tribal government charters for Indian enterprises, what the composition of the board of directors should be for such enterprises, who to include in determining economic disadvantage, and how "management of daily operations" should be determined.

2. Uncoordinated Federal Categorical Programs — Freq. 79

More than $2.6 billion are appropriated annually for Indian programs or programs and services which benefit individual Indians. Federal Indian domestic assistance is offered by departments such as Interior, Health and Human Services, Education, Labor, Housing and Urban Development, Treasury, Commerce, Justice, Transportation and Energy. Independent agencies such as the Equal Employment Opportunity Commission, National Foundation on the Arts and the Humanities, and Office of Personnel Management, among others, also provide domestic assistance.

There are nearly twenty programs in a host of departments and agencies which are providing business development assistance to Indian reservations. These programs demonstrate a high degree of overlap and fragmentation. The structure of federal programming is such that its categorical nature makes it difficult for program recipients to succeed. Conflicting program goals, policies, regulations, procedures, reporting requirements, and funding and lending cycles make it difficult for Indian tribes to succeed at program coordination when the federal government itself is so uncoordinated.

Programs see compliance, not profitable activity, as the determinant of a successful project. Federal personnel are not competent at assessing the needs of business. The technical assistance which is provided is generally programmatic or compliance oriented.

The burdens of coordination are placed on Indian grantee recipients because federal programs which deal with land, labor and capital (elements of an economic production function) are not able to coordinate among themselves. The lack of federal coordination creates confusion, delay, waste and unnecessary costs to business activity.

3. Inadequate Federal Funding — Freq. 58

There are three basic problems with the pattern of federal funding to Indian tribes. The first problem is that funds are not targeted to economic development activity. Funds are targeted at social, educational, health and welfare services because reservation economies are so underdeveloped that they cannot support basic governmental services. Instead of focusing federal funding on economic development which could support tribal government services, federal funding patterns encourage dependency.

The second problem is that entrenched bureaucracies fight for their prerogatives by budgeting for Indian failure. Neither the Bureau of Indian Affairs nor the Indian Health Service budget for Indian self-determination. Incentives to self-determination are not part of the budgetary and funding process.

The third federal funding problem is that every federal program has a funded constituency which competes for finite resources. Since profitable business is not funded by federal programs, there is no voice for profitability.

Since it is the federal government which maintains trust restrictions on Indian assets and makes access to private capital difficult, Indian tribes reason that it should be the federal government which provides capital to offset those restrictions.

4. Indian Tribal Governmental Tax Status Act — Freq. 44

The Indian Tribal Governmental Tax Status Act of 1982 enables Indian tribal governments to be treated as states or political subdivisions of states for various sections of the Internal Revenue Code.

One provision of the Act provides that Indian tribal governments may issue tax-exempt revenue bonds which can be used to support basic infrastructure or community development construction. Tribal governments do not have the technical capability for properly utilizing and benefiting from this provision without technical assistance.

Tribal governments also contend that the absence of a provision granting tax-exempt treatment for the issuance of tribal industrial development bonds impedes their efforts to raise capital for tribal government business development. State and local governments are given such treatment. This puts tribal governments at a disadvantage vis a vis these other governments.

The Administration has supported tax-exempt treatment for industrial development bonds by tribal governments.

5. Federal Programming Unresponsiveness Freq. 40

Federal programming is focused on social, educational, health and welfare needs of Indian individuals. Funds for their benefit are channeled through tribal governments. To the extent that federal programming does focus on economic development, it concentrates primarily on economic development controlled by tribal government. And, to the extent that funds for economic development are channeled to tribal governments, the focus is on large tribal governments and on tribes which have substantial energy or natural resources. Since 75% of all reservations and villages have 500 or fewer member residents, economic development resources are directed toward the least number of tribes.

Federal programming for economic development is biased in favor of reservation size, physical resource inventory, and tribal government. It is not biased in favor of financial rate of return, it does not favor individual Indian entrepreneurs, and it does not understand the needs of business.

6. Department of Labor Programmatic & Administrative Deficiencies Freq 34

The main deficiencies cited by witnesses before the Commission were: fragmentation of authority over Indian training programs, incompetent federal personnel, inadequate technical assistance, transition problems from CETA to JTPA, and local coordination requirements relating to other federally sponsored training efforts.

Approval, implementation and close-out of JTPA grants to Indian tribes were identified as fragmentation deficiencies which impose undue complexity and delay. The reductions-in-force within Labor resulted in the placement of personnel in the Indian training program who did not fully understand Indian labor training problems. The movement to private sector based training, away from tribal government employment and training, created some transition difficulties on the local level. The requirement that local programs coordinate with other federal training efforts funded by the Bureau of Indian Affairs, Department of Education's Office of Vocational and Adult Education, Department of Housing and Urban Development, and Department of Health and Human Services' Administration for Native Americans is a problem when these federal level agencies do not coordinate well. Problems with census data accuracy and allocation formula distribution were also identified with respect to the allocation of funds between urban and reservation Indians.

The most persistent complaint, however, was the inadequacy of technical assistance. Designing programs which focus on private sector labor markets, operating such programs, and producing employment results are areas where technical assistance is absent. Providing expert technical assistance from private sector sources would improve Indian training program design and results.

7. Government Business Planning Freq. 32

At the planning threshold, Congress does not understand what causes Indian social and economic underdevelopment. Congress responds to the social consequences of economic underdevelopment with categorical programs and safety nets. It is organized into jurisdictional authorizing and appropriating committees which by their nature have institutionalized points of view. Bureaucratic programs report to their respective committees and reflect the same institutional biases. Problems

and solutions are characterized in bureaucratic or political rhetoric. What government does not realize is that a web of interconnected problems exist such that the option of trying to solve each problem on its own cannot succeed.

The political focus on specifics and specific solutions, scepticism that anything fundamental can be done, an anti-planning bias against systems modeling, model integration and legislative action, and the inability to create consensus all work to perpetuate the problems of Indian social and economic underdevelopment. Government planning is non-planning because it fails to understand the interrelationships among many varied governmental actions and their impacts on the Indian reservation universe.

An Indian reservation can be viewed as a controlled experiment whose expected results have become distorted through the uncontrolled introduction of foreign programs. In an effort to restore stability and to achieve desired for results, new programs are introduced. In the process, phenomenological and pathological activity occurs for which new programs are designed. The social experiment fails because of the irresponsibility of its planners, not because of the moral weaknesses of the victims which it creates.

Government planning deals with the here and now of every fiscal year. It cannot conceive that relief may be needed, not new reactive program impacts.

8. Incompetent Federal Technical Assistance — Freq. 22

Federal technical assistance is incompetent to support the needs of Indian business development. Federal personnel are not experienced in business. They are recruited and hired for their experience in particular occupational series required for programmatic or administrative system functioning. Technical assistance consists more of compliance activity, and monitoring for compliance, than it consists of providing quality business technical assistance.

Technical assistance for compliance with program guidelines is more interested in program success than it is in business profitability. It is better to be unprofitable and to continue to receive free grant assistance, than it is to be successful and to incur the wrath of the compliance bureaucracy.

"Expert" technical assistance focuses on how to write successful applications for grant programs, how to comply with grant programs, how to write measurable objectives and report on program success, and how to train staff in program operations. "Expert" technical assistance knows little of industrial engineering, hydrology, marketing, product design, etc.

9. Federal Allocation Formula Inequity — Freq. 21

The shift from categorical grants to block grants based upon population formulas has intensified competition between states and tribes. Where states are conduits to tribes, tribes complain of population census data which determines the basis for their allocation, and they complain of the delay in the distribution of funds by states to them.

10. Federal-Tribal Cooperation Freq. 17

The structure of the federal system is welded together by categorical programs, unidimensional regulations, burdensome compliance and reporting procedures, and poorly targeted budget allocations. In such a system of programs, it is difficult for federal and tribal governments to cooperate effectively with each other. Because both are governments, it is difficult for them to cooperate in the building of a viable Indian reservation private sector.

The Administration for Native Americans (ANA) introduced an imaginative concept in its Social and Economic Development Strategy (SEDS) approach to funding, insofar as it sought to effect cooperation on the local level, focusing on economic development synergy and outcomes. Unfortunately, the Pay-Off Ratios Study of ANA grantees discovered that ANA success was being measured in terms of how many other government grant proposals ANA funds could be used to write. Basing government program effectiveness on how many grant subsidy proposals a grantee can write does not approach fulfillment of the SEDS concept. It does reflect a high degree of cooperation on government programming, but not much on the creation of an independent business sector on Indian reservations.

Cooperation or partnership in the development of a private sector is difficult when federal programs focus on creating more government dependency, not less. Cooperation becomes negotiation of grant terms. Neither cooperates with the other to build a local reservation private sector made up of independent businesses. Federal funds are used to underwrite grantsmanship and delegations of tribal government officials who travel to Washington to create political leverage for more program funding.

There is practically no joint federal-tribal cooperation on the development of an independent private sector on Indian reservations.

11. Federal Data Documentation Freq. 16

There is no central data bank where one can obtain government-wide information about Indian population, resources, budgets or economic activity. Information is diffused throughout many agencies which do not share information in any consistent manner. Data is collected for parochial purposes. There is also a lack of clarity in the data collected, probably because data collection is inconsistent and its methods unreliable. As a consequence, the data base is really too weak to permit good data analysis.

For example, an education program will report the number of students funded and program budget. It does not report data which make program analysis possible, such as reading scores, computation or competency scores. Another example is soil classification surveys. The BIA reports that most of the land it holds in trust has not been classified. Therefore, a data base for analyzing land use does not exist. The same is true of timber inventories.

Incomplete data bases make it impossible to analyze social and economic investment policies in terms of their success in the real world. All one can say say is that budgets are growing and unmet need is growing.

Federal data documentation weaknesses make it clear that no model exists for measuring progress in Indian economic development.

12. Excessive Federal Regulation — Freq. 15

Excessive program compliance requirements impose burdensome costs on Indian economic activity. A great deal of resources are consumed in administrative costs associated with bureaucratic red tape. Program complexity, compliance, and reporting increase the costs of doing business. Excessive regulation creates delay, costs money, and discourages private investors. The plethora of guidelines, layers of approvals, workshops on compliance, and overlapping regulation meet the needs of the government, not business.

13. Legal Protection of Indian Natural Resources — Freq. 11

There is competition between enforcing Indian trust responsibility and the public interest within the Interior Department, competition between Interior and Justice on case theory, and competition within Justice on case management where it simultaneously sues and defends the United States. This competition contains the potential for legal conflicts of interest to arise.

14. Federal Environmental Protection — Freq. 6

The National Environmental Protection Act requires that environmental impact statements be completed before any projects can be undertaken. Such regulation is seen as costly and intrusive. Delegating NEPA enforcement to Indian tribes and permitting their determination of when a statement should be filed would decrease costs in appropriate cases.

Furthermore, complex and burdensome requirements exist for applications to the U.S. Army Corps of Engineers for river front permits. An expedited process would reduce project development costs.

15. Miscellaneous Federal — Freq. 6

Two government policies have been identified as obstacles to Indian reservation economic development. These are: fear of "termination" by Congress because of the failure of Congress to repudiate or repeal House Concurrent Resolution 108. The second concern is that enterprise zone legislation will not provide for Indian reservation designation, thus depriving tribes of the ability to offer site location incentives.

STATE AND LOCAL GOVERNMENT OBSTACLES
TO
INDIAN RESERVATION ECONOMIC DEVELOPMENT

STATE AND LOCAL GOVERNMENT OBSTACLES TO INDIAN RESERVATION ECONOMIC DEVELOPMENT.....p. 48

Composition of State and Local Government Obstacles to Indian Reservation Economic Development Graph.....p. 50

1. Jurisdictional Disputes Among Tribes, States, and Local Governments.....p. 52

2. State Banking Law Security.....p. 52

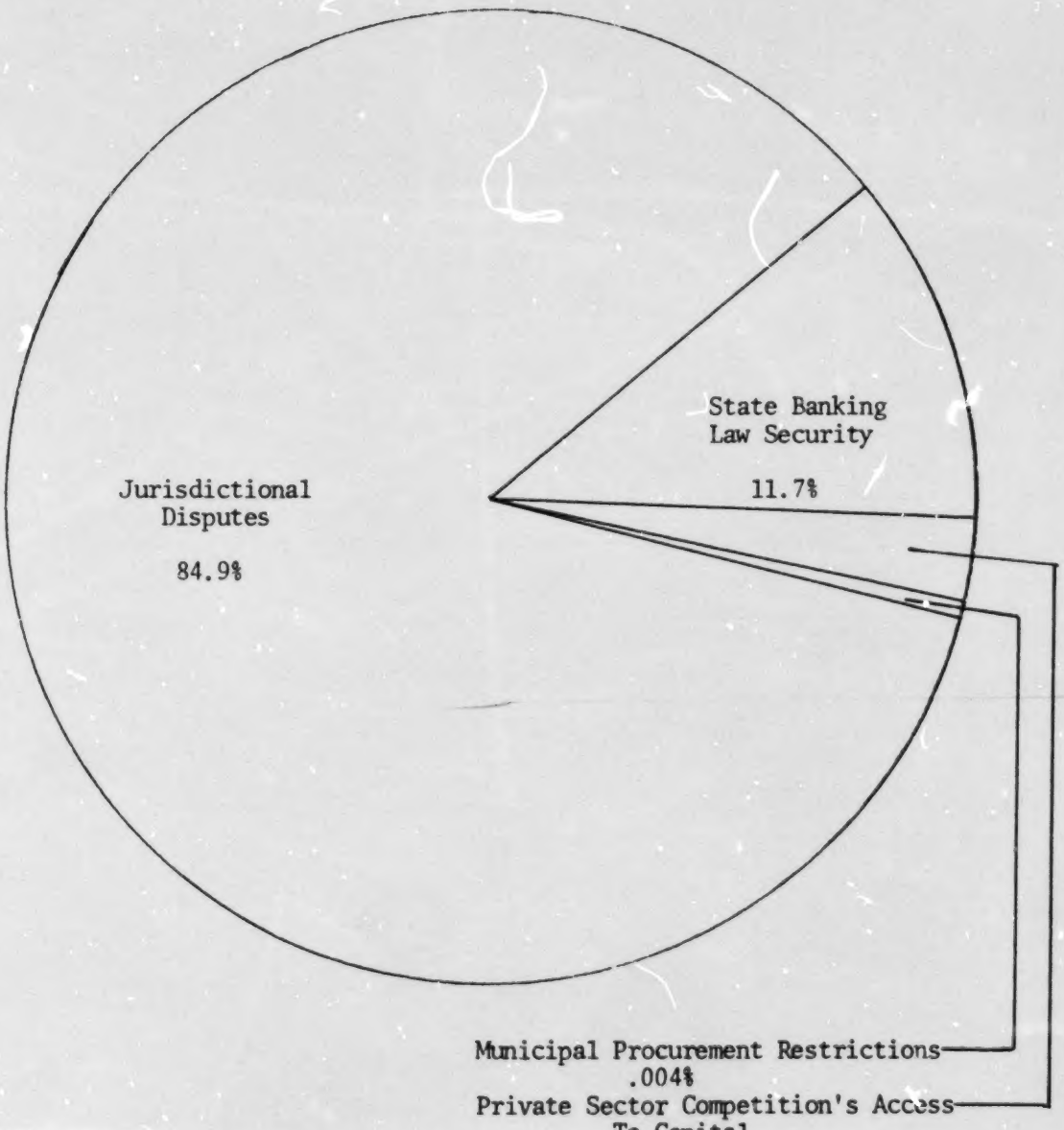
3. Private Sector Competition's Access To Capital.....p. 52

4. Municipal Procurement Restrictions.....p. 52

COMPOSITION OF STATE AND LOCAL GOVERNMENT OBSTACLES

TO

INDIAN RESERVATION ECONOMIC DEVELOPMENT



I. Jurisdictional Disputes Among Tribes, States, and Local Governments Freq. 209

Generally, states do not have jurisdiction over matters involving only Indians on an Indian reservation, unless there is specific legislation by Congress permitting such jurisdiction. "In all other cases, the state has jurisdiction unless there is involved a subject matter of special federal concern," (Felix S. Cohen's Handbook of Federal Indian Law, (1942 ed.) at p. 121). As a consequence, states generally have jurisdiction over non-Indians within the borders of an Indian reservation located within the state. But, Indian tribes also have civil jurisdiction over non-Indians within the borders of their reservations. In a landmark case, Buster v. Wright, 135 Fed. 947 (6th Cir. 1905), app. dism., 203 U.S. 599 (1906), the court held that tribes had jurisdiction over non-Indians residing on non-Indian lands within the borders of an Indian reservation. This case is still considered good law:

> ...It is said that the sale of these lots and the incorporation of cities and towns upon the sites in which the lots are found authorized by act of Congress to collect taxes for municipal purposes segregated the town sites and the lots sold from the territory of the Creek Nation, and deprived it of governmental jurisdiction over this property and over its occupants. But the jurisdiction to govern the inhabitants of a country is not conditioned or limited by the title to the land which they occupy in it, or by the existence of municipalities therein endowed with power to collect taxes for city purposes, and to enact and enforce municipal ordinances. Neither the United States, nor a state, nor any other sovereignty loses the power to govern the people within its borders by the existence of towns and cities therein endowed with the usual powers of municipalities, nor by the ownership nor occupancy of the land within its territorial jurisdiction by citizens or foreigners. (pp. 95-952).

In most cases, state, local and tribal governments have concurrent civil jurisdiction over non-Indians within the borders of an Indian reservation.

In cases where the situs, person and subject matter create concurrent civil jurisdiction, the laws of state, local and tribal governments all have effect. Where there is a conflict of laws, a non-Indian must comply with both laws. In such cases, a non-Indian may pay two sets of taxes, business license fees, purchase two sets of vehicle license plates, comply with two different zoning ordinances, and operate with two sets of civil rights before non-Indian and Indian courts.

Concurrent legislative jurisdiction over non-Indian lands and non-Indian persons has produced considerable litigation because of the high degree of non-Indian residence on Indian reservations. The Bureau of the Census estimates that 50.8% of the persons living on Indian reservations are not American Indians. Since a great deal of reservation economic activity involves non-Indians, concurrent legislative jurisdiction becomes competitive legislative jurisdiction.

Competitive jurisdiction exists in a number of areas: taxation of sales, business and amusement activity, severance taxation of subsurface minerals, non-Indian personal income taxation, indirect taxation of Indian property, fish and game regulation, water regulation, zoning, etc.

Historically, Indian tribes did not exercise much legislative jurisdiction over non-Indians. In an era of tribal sovereignty, tribes have begun to exercise their

governmental authorities more widely over non-Indians, to the extent that tribes seek to regulate economic activity which involves non-Indians or non-Indian business organizations.

There are six generalized responses to enhanced tribal regulation of economic activity which affect non-Indian businesses. One response is a feeling of taxation and regulation without representation. The second response is a fear of tribal government and tribal courts "taking" non-Indian property without due process of law. The third response is a perception of risk which deters investment. The fourth response is litigation challenging jurisdiction which raises the costs of doing business. The fifth response is acquiescence and continued operation of the business. The sixth response is acquiescence and business failure because of the higher costs of doing business.

In areas where states, local governments and tribal governments have negotiated agreements respecting jurisdiction, there are significantly reduced levels of litigation. In other areas, litigation is frequent and business costs are higher.

2. State Banking Law Security — Freq. 29

State financial institutions are usually limited to approved lists of securities for loans. Since Indian property is held in trust and can not be mortgaged, financial institutions feel that they have little protection for their loans without federal guarantees. Commercial banking practice is seen as unresponsive, reluctant, and even discriminatory since it is limited both by state law and the prudent man rule.

3. Private Sector Competition's Access to Capital — Freq. 7

Tribal governments are the major promoters of economic activity on Indian reservations. They frequently see themselves in competition with Indian and non-Indian private sector activity. Tribal governments believe that successful local business activity exists in private hands because private business has better access to capital. Since the private sector can offer mortgages on property and other secured interests, it is seen as having a superior advantage.

Tribal governments also experience competition from existing private sector activity when tribes capitalize businesses to produce the same goods or services. Since most goods and services are already being produced by some business, tribes see themselves at a disadvantage in starting-up a competitive business. The competitive edge which existing business is claimed to have is that of better access to capital.

4. Municipal Procurement Restrictions — Freq. 1

It is believed that municipal procurement procedures discriminate against Indian tribal businesses which seek to do business off the reservation as minority business enterprises.

APPENDICES

APPENDICES.....p.53

Population Profile.....p.55

Budget Breakdown for Federal Indian Domestic Assistance.....p.61

National Hearings Sites: Individuals and Organizations Providing Testimony.....p.71

Overview of the Private Sector Opportunities and Constraints Study.....p.83

Tribal Water Rights Issues: Prospect for Economic Development.....p.96

POPULATION PROFILE

POPULATION

In 1980 the Bureau of the Census reported there were 1,534,000 Native Americans living in the United States. The Bureau of Indian Affairs estimated that 755,201 American Indians and Alaska Natives lived "on or near" Indian reservations, trust lands, or Native villages. Census estimated that 631,574 Indians and Alaska Natives lived on Indian reservations or in Native villages. The principal difference between the two estimates is the Bureau of Indian Affairs included most of the Indian population in Oklahoma (120,525) which did not live on an Indian reservation, but did live "on or near" trust lands. The tables below show the number, location, and percentage distribution of the BIA reservation Indian population and the Bureau of the Census state Indian population for 27 of 50 states. Approximately 90% of the BIA reservation Indian population is concentrated in 11 states.

TABLE 1*
RESERVATION INDIAN POPULATION

Rank	State	Population	Percent Distribution
1.	Oklahoma	159,852	21.17 %
2.	Arizona	154,818	20.50 %
3.	New Mexico	105,973	14.03 %
4.	Alaska	64,970	8.60 %
5.	South Dakota	46,101	6.10 %
6.	Washington	39,726	5.26 %
7.	Montana	27,529	3.65 %
8.	California	23,625	3.13 %
9.	North Dakota	21,552	2.85 %
10.	Wisconsin	18,279	2.42 %
11.	Minnesota	18,260	2.42 %
12.	New York	11,167	1.48 %
13.	Nevada	8,259	1.09 %
14.	Utah	7,140	0.95 %
15.	Idaho	7,108	0.94 %
16.	North Carolina	5,971	0.79 %
17.	Michigan	5,829	0.77 %
18.	Wyoming	5,385	0.71 %
19.	Mississippi	4,487	0.60 %
20.	Nebraska	4,404	0.58 %
21.	Oregon	4,301	0.57 %
22.	Colorado	2,661	0.35 %
23.	Maine	2,261	0.30 %
24.	Kansas	2,243	0.30 %
25.	Florida	1,921	0.25 %
26.	Louisiana	717	0.10 %
27.	Iowa	662	0.09 %
		755,201	100.00 %

TABLE 2**
27 STATE INDIAN POPULATIONS

Rank	State	Population
1.	California	201,369
2.	Oklahoma	169,459
3.	Arizona	152,745
4.	New Mexico	106,119
5.	North Carolina	64,652
6.	Alaska	64,103
7.	Washington	60,804
8.	South Dakota	45,968
9.	Michigan	40,050
10.	New York	39,582
11.	Montana	37,270
12.	Minnesota	35,016
13.	Wisconsin	29,499
14.	Oregon	27,314
15.	North Dakota	20,158
16.	Florida	19,257
17.	Utah	19,256
18.	Colorado	18,068
19.	Kansas	15,373
20.	Nevada	13,308
21.	Louisiana	12,065
22.	Idaho	10,521
23.	Nebraska	9,915
24.	Wyoming	7,094
25.	Mississippi	6,180
26.	Iowa	5,455
27.	Maine	4,087
		1,234,687

Approximately 90% of the Census state Indian population is concentrated in 15 out of 50 states. Table 2 above includes Census data for non-federally recognized Indians.

The national Indian population is younger in age than is the national population. Approximately 31% of the Indian population is under 15 years of age, in contrast to 22.6% for the national population. Only 7.6% of the Indian population is over

60 years, while for the nation, 15.8% of the population is 60 years and older. The median age for Indians is approximately 23 years of age.

In 1980 there were 501,840 Indian persons, three years old and over, who were enrolled in nursery, kindergarten, elementary, high schools, and college. About one-third of the population was enrolled in a school of some kind. For the Indian population 25 years and older, one-third had not completed high school. However, more than half of this population had a high school or better education. The Indian population is younger, with more persons in school, and for those out of school, better educated than the 1970 census previously indicated. The median years of school completed in 1980 was 12.2.

UNEMPLOYMENT

In 1980, the Census reported unemployment for the American Indian, Eskimo, and Aleut population was 7.5% nationally. Census calculated the rate of unemployment by dividing the number of persons 16-65 years old who were unemployed, by the total number of persons who were 16-65 years old. Table 3 below shows the number of reservation Indians who were 16-65 years old, the number within that group who were actively seeking employment, and the average rate of Indian reservation unemployment. The unemployment rate is based upon Bureau of Indian Affairs estimates for 1983.

TABLE 3
INDIAN RESERVATION UNEMPLOYMENT

State	16 & Over	Seeking Work	Unemployment Rate
1. Oklahoma	110,137	8,716	7.91 %
2. Arizona	97,732	24,320	24.88 %
3. New Mexico	74,462	15,860	21.30 %
4. Alaska	39,352	10,822	27.50 %
5. South Dakota	26,556	6,003	22.61 %
6. Washington	25,635	8,711	33.98 %
7. Montana	17,418	4,043	23.21 %
8. California	16,281	4,999	30.70 %
9. North Dakota	13,527	3,893	28.78 %
10. Wisconsin	11,590	3,300	28.47 %
11. Minnesota	11,457	3,892	33.97 %
12. New York	8,225	2,502	30.42 %
13. Nevada	5,649	1,662	29.42 %
14. Utah	4,533	902	19.90 %
15. Idaho	4,482	1,039	23.18 %
16. North Carolina	4,152	659	15.87 %
17. Michigan	3,845	1,229	31.96 %
18. Wyoming	3,691	899	24.36 %
19. Mississippi	2,737	352	12.86 %
20. Nebraska	3,075	950	30.89 %
21. Oregon	2,754	614	22.30 %
22. Colorado	1,809	654	36.15 %
23. Maine	1,401	268	19.13 %
24. Kansas	1,341	158	11.78 %
25. Florida	1,198	241	20.12 %
26. Louisiana	464	54	11.64 %
27. Iowa	377	205	54.38 %
Reservation Total	493,880	106,947	21.65 %

If the State of Oklahoma, which has a relatively larger Indian population and higher degree of Indian employment is excepted from this list, the average unemployment rate for Indian reservations would be 25.6%, approximately five points higher than the figure indicated.

The Census estimated there were roughly 408,000 Indian persons who were living below the poverty level approximately 26.6% of the total Indian population. In 1980 12.4% of the nation's population lived below the poverty line. The unemployment rate and poverty rate for the BIA reservation Indian population appears to be twice as high as the national levels. Moreover, while the median income for the United States was $19,928 in 1980, the median income for all Indians in 1980 was $16,672. This was $3,256 or 16% lower than the national level.

INDIAN RESERVATIONS AND ALASKAN VILLAGES

The Bureau of the Census counted American Indians residing on 278 Indian reservations and Alaska Natives residing in 209 Native villages for a total of 631,574 Indian or Native persons living on 487 reservations or villages. The table below shows the percentage distribution of reservations and villages according to various levels of population. Approximately 35% of all reservations and villages have fewer than 100 persons in residence. In fact 6.4% of all reservations and villages have no population. Nearly three-fourths of the reservations and villages have fewer than 500 resident members. Less than fifteen percent of all reservations and villages have more than 2,000 resident members.

TABLE 4
DISTRIBUTION OF RESERVATIONS AND VILLAGES BY POPULATION LEVELS

Population Levels	Reservations and Villages	Percent Distribution
80,000- +++++	1	0.2 %
40,000-80,000	-	-
20,000-40,000	5	1.0 %
10,000-20,000	7	1.4 %
5,000-10,000	22	4.5 %
3,000-5,000	12	2.5 %
2,500-3,000	8	1.6 %
2,000-2,500	12	2.5 %
1,500-2,000	10	2.0 %
1,000-1,500	19	4.0 %
500-1,000	34	7.0 %
250-500	82	16.8 %
100-250	103	21.1 %
50-100	70	14.4 %
0-50	101	21.0 %
Total	487	100.00%

CLASS OF WORKER AND INDUSTRY

Of the 507,614 Indian persons who were employed in 1980, 336,463 (67%) were private wage and salary workers. An additional 26,227 (5%) were either self-employed or

unpaid family workers. Federal, state and local governments employed 144,924, or 29% of those persons 16 years old and over who were employed. These figures do not include employment in tribal governments, which is elsewhere tabulated as private wage or salary employment. As a result more than 30% of Indian employment would be in the public sector.

The Table below shows national Indian employment by Standard Industrial Classification system industries. The table includes public and private sector employment, percentage distribution of employment among industries, and the rank ordering of industries.

TABLE 5
EMPLOYMENT BY INDUSTRY

RANK	INDUSTRY	EMPLOYMENT	% DISTRIBUTION
1.	Professional and Related Services	102,589	20.2 %
2.	Manufacturing	97,913	19.3 %
3.	Retail and Wholesale Trade	79,655	15.7 %
4.	Public Administration	59,655	11.7 %
5.	Construction	42,592	8.4 %
6.	Transportation	20,792	4.1 %
7.	Business & Repair Services	20,583	4.0 %
8.	Agriculture, Forestry, Fisheries	17,839	3.5 %
9.	Communication, Public Utilities	14,691	2.9 %
10.	Other Personal Services	14,251	2.8 %
11.	Insurance, Real Estate, Finance	11,258	2.2 %
12.	Mining	11,133	2.2 %
13.	Banking and Credit Agencies	5,901	1.2 %
14.	Entertainment and Recreation Services	5,057	1.0 %
15.	Private Households	4,112	0.8 %
	TOTAL	507,614	100.00%

Approximately seventy-five percent of Indian employment is concentrated in five Standard Industrial Classification system industries.

While the industries noted in the table above employ persons from many different occupational series, the table below shows the distribution of the Indian labor force among major occupational areas in comparison to the national labor force distribution.

TABLE 6
LABOR FORCE DISTRIBUTION BY OCCUPATION

OCCUPATIONAL SERIES	INDIAN LABOR FORCE		NATIONAL LABOR FORCE	
	MALE	FEMALE	MALE	FEMALE
Managerial and Professional Specialty	7.8 %	7.3 %	22.5 %	20.6 %
Tech., Sales & Admin. Support	12.0 %	37.0 %	18.4 %	44.6 %
Service	12.4 %	25.5 %	9.3 %	18.0 %
Farming, Forestry, and Fishing	6.1 %	1.3 %	4.3 %	1.0 %
Precision Production, Craft, & Repair	23.9 %	3.2 %	20.8 %	2.4 %
Operators, Fabricators, and Laborers	30.7 %	14.5 %	24.2 %	12.3 %

Approximately 55% of Indian male employment is in skilled and semi-skilled blue collar occupations such as: precision production, craft and repair, and operators, fabricators, and laborers. Approximately 63% of Indian female employment is in lesser skilled white collar occupations, such as: technician, sales and administrative support, and services.

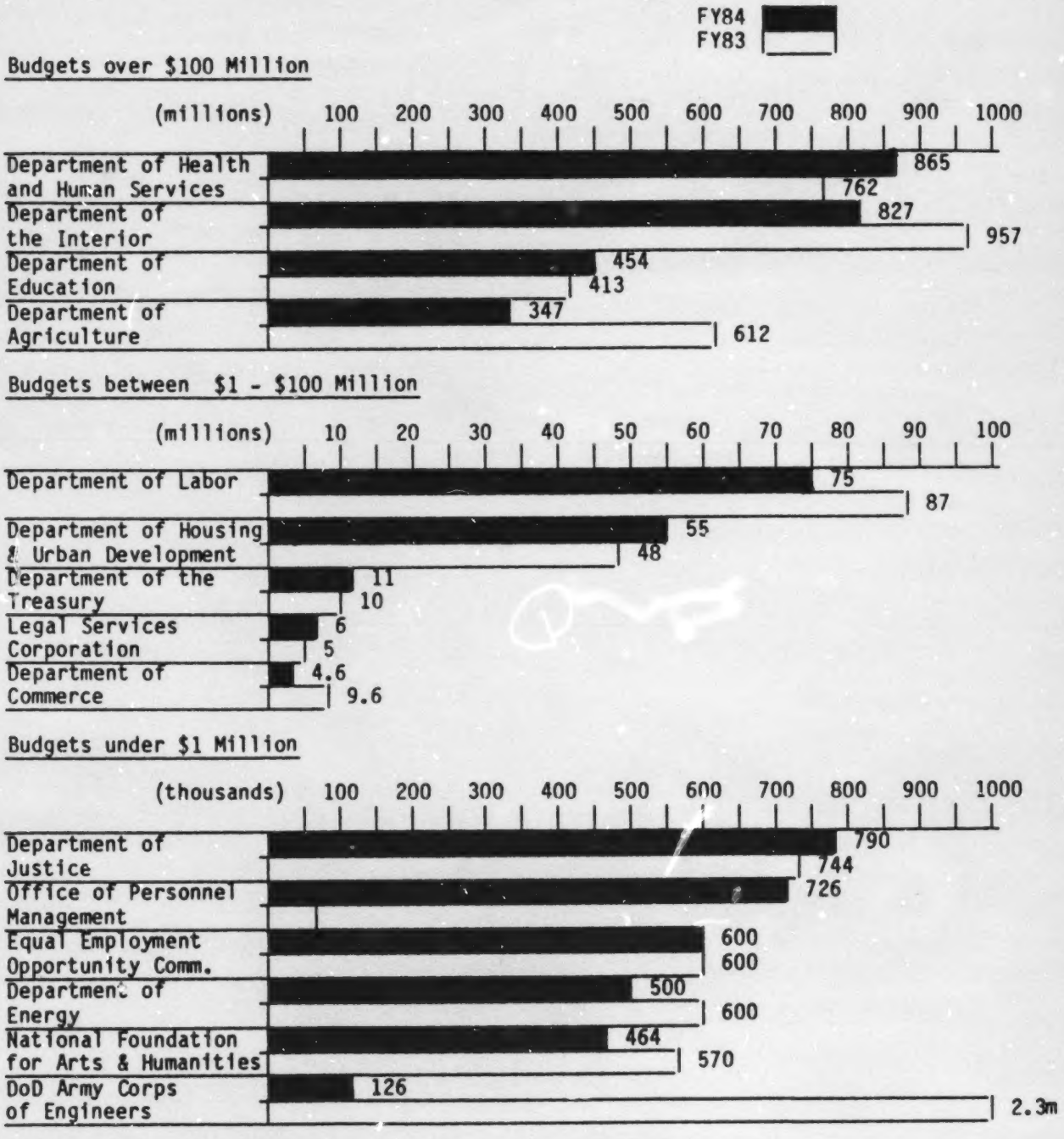
The health of the Indian labor force and Indian population is generally worse than national mortality and morbidity rates. The Indian and Alaska Native age adjusted mortality rates are considerably above those of other Americans for: tuberculosis, chronic liver disease, cirrhosis, accidents, diabetes mellitus, homicide, pneumonia, influenza, and suicide. In addition, they are above those of other Americans for chronic obstructive pulmonary diseases and allied conditions of malignant neoplasms, and major cardiovascular diseases. Deaths due to alcoholism are about five times that of the national average.

BUDGET BREAKDOWN

FOR FEDERAL INDIAN

DOMESTIC ASSISTANCE

BUDGET BREAKDOWN FOR FEDERAL INDIAN DOMESTIC ASSISTANCE*



* Budget figures are based on estimates and approximations.

BUDGET BREAKDOWN FOR FEDERAL INDIAN DOMESTIC ASSISTANCE

	FY83	FY84
Department of the Interior	**$957,852,844**	**$827,690,144**
Bureau of Indian Affairs	954,127,000	823,902,000
Office of Hearings and Appeals	1,751,144	1,751,144
Office of the Solicitor	1,132,000	1,162,000
Indian Arts and Crafts Board	842,700	875,000
See Attachment A for more complete breakdown.		
Department of Health and Human Services	**$762,414,885**	**$865,483,931**
Indian Health Service	679,216,000	777,000,000
Administration on Children, Youth, and Families	33,401,546	36,037,325
Administration for Native Americans	28,000,000	29,000,000
Social Security Administration	15,711,991	17,501,699
Administration on Aging	5,735,000	5,735,000
Administration on Developmental Disabilities	350,348	209,907
See Attachment B for more complete breakdown.		
Department of Agriculture	**$612,572,937**	**$347,324,300***
Farmers Home Administration	290,110,000	12,080,000*
Food and Nutrition Service	289,110,000	309,080,000
Soil Conservation Service	20,253,000	20,253,000
Agricultural Stabilization and Conservation Service	5,842,407	*
Forest Service	3,116,000	3,291,000
Cooperative Extension Service	2,700,000	2,700,000
Rural Electrification Administration	787,000	0
Agricultural Cooperative Service	7,500	*
Foreign Agricultural Service	300	300
See Attachment C for more complete breakdown.		
Department of Education	**$413,100,000**	**$454,000,000**
Elementary and Secondary Education	316,400,000	355,100,000
Postsecondary Education	48,300,000	49,000,000
Special Education/Rehabilitative Services	30,400,000	32,200,000
Bilingual Education	10,500,000	10,000,000
Vocational and Adult Education	7,500,000	7,700,000
See Attachment D for more complete breakdown.		

* FY84 budget figures for FmHA, ASCS, and ACS are unavailable or incomplete, thus affecting the total FY84 budget for USDA.

BUDGET BREAKDOWN...(continued)

	FY83	FY84
Department of Labor	$87,264,199	$75,500,000
Comprehensive Employment Training Act	87,264,199	
Jobs Training Partnership Act		75,500,000
Department of Housing and Urban Development	$48,246,146	$55,542,500
Community Development Block Grants	34,200,000	39,700,000
Indian Housing Development Program	12,824,146	13,912,500
Urban Development Action Grants	1,222,000	1,930,000
Department of the Treasury	$10,800,000	$11,600,000
General Revenue Sharing Program	10,800,000	11,600,000
Legal Services Corporation	$5,458,629	$6,228,842
Department of Commerce	$9,691,257	$4,664,000
Economic Development Administration	8,191,257	3,064,000
Minority Business Development Agency	1,500,000	1,600,000
Department of Justice	$744,000	$790,000
Land and Natural Resources Division	744,000	790,000
Office of Personnel Management	$55,890	$726,000
Intergovernmental Personnel Programs	55,890	726,000
Equal Employment Opportunity Commission	$600,000	$600,000
Tribal Employment Rights Offices	600,000	600,000

BUDGET BREAKDOWN...(continued)

	FY83	FY84
Department of Energy	$600,000	$500,000
Council of Energy Resource Tribes Contract	600,000	500,000
National Foundation on the Arts and the Humanities	$570,525	$464,849
National Endowment for the Arts	336,694	366,000
National Endowment for the Humanities	233,231	91,717
Institute of Museum Services	600	7,132
Department of Defense	$2,317,000	$126,500
Army Corps of Engineers		

****

TOTAL FEDERAL INDIAN DOMESTIC ASSISTANCE $2,912,288,937 $2,651,241,066

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NOTE #1 : The above figures have been taken from programs which directly or indirectly provide assistance to American Indian populations on or off Indian reservations. Those programs without specific set-asides were estimated by people directly involved in program operations. Other agencies which did not respond to Commission inquiries by this date but which offer assistance to American Indians are the Smithsonian Institution, the Environmental Protection Agency, the Department of Transportation, the National Science Foundation and the Small Business Administration. The Commission believes estimation is that budget figures from these agencies would not significantly alter the gross totals.

NOTE #2 : These budget figures do not include procurement contracts.

ATTACHMENT A

DEPARTMENT OF THE INTERIOR

	FY83	FY84
Bureau of Indian Affairs	$954,127,000	$823,902,000
Education Programs		
School Operations	179,556,000	176,933,000
Johnson O' Malley Funds	66,929,000	26,000,000
Continuing Education	51,658,000	52,821,000
Indian Services		
Tribal Government Services	25,609,000	23,694,000
Social Services	100,187,000	99,609,000
Law Enforcement	35,972,000	34,944,000
Housing	53,298,000	0
Self-Determination Services	58,876,000	58,779,000
Navajo-Hopi Settlement Program	3,923,000	3,951,000
Economic Development/Employment Programs		
Employment Development	27,554,000	26,341,000
Business Enterprise Development	10,966,000	10,521,000
Road Maintenance	21,301,000	22,081,000
Natural Resources Development		
Forestry and Agriculture	104,236,000	76,282,000
Minerals, Mining, Irrigation & Power	15,005,000	16,406,000
Trust Responsibilities		
Indian Rights Protection	19,523,000	17,823,000
Real Estate and Financial Trust Services	28,877,000	27,531,000
Facilities Management	89,872,000	91,113,000
General Administration		
Management Administration	48,826,000	46,274,000
Employee Compensation Payments	4,582,000	6,829,000
Program Management	7,377,000	5,970,000
Office of Hearings and Appeals	$ 1,751,144	$ 1,751,144
Board of Indian Appeals		
Indian Probate Courts		
Office of the Solicitor	$ 1,132,000	$ 1,162,000
Division of Indian Affairs		
Indian Arts and Crafts Board	$ 842,700	$ 875,000
**********	**********	**********
TOTAL DEPARTMENT OF THE INTERIOR INDIAN BUDGET	$957,852,844	$827,690,144

ATTACHMENT B

DEPARTMENT OF HEALTH AND HUMAN SERVICES

	FY83	FY84
Indian Health Service	$679,216,000	$777,000,000
Hospitals and Health Clinics		380,000,000
Contract Health Care		157,000,000
Program Management		60,000,000
Community Health Representatives		26,000,000
Dental Care		24,000,000
Alcohol Treatment Program		23,000,000
Equity Health Care		22,000,000
Sanitation		19,000,000
Maintenance and Repair		18,000,000
Public Health Nursing		11,000,000
Mental Health Care		11,000,000
Urban Health Care		8,000,000
Reimbursements		6,000,000
Indian Health Manpower		6,000,000
Health Education		3,000,000
Tribal Management		2,000,000
Immunization		1,000,000
Administration for Children, Youth, and Families	$ 33,401,546	$ 36,037,325
Head Start	32,600,000	35,200,000
National Center on Child Abuse and Neglect	396,852	298,675
Child Welfare Services	242,780	396,512
Family and Youth Services Bureau Runaway Programs	161,914	142,138
Administration for Native Americans	$ 28,000,000	$ 29,000,000
Social Security Administration	$ 15,711,991	$ 17,501,699
Office of Family Assistance Low Income Home Energy Assistance Grants #	129	129
Administration on Aging	$ 5,735,000	$ 5,735,000
Administration on Developmental Disabilities	$ 350,348	$ 209,907
TOTAL DEPARTMENT OF HEALTH AND HUMAN SERVICES INDIAN BUDGET	$762,414,885	$865,483,931

ATTACHMENT C

DEPARTMENT OF AGRICULTURE

	FY83	FY84
Farmers Home Administration	$290,686,730	$ 12,000,000
Water and Waste Disposal Systems for Rural Communities		
Loans	133,350,000	N/A
Grants	64,013,730	N/A
Community Facilities Loans	55,390,000	N/A
Farm Operations Loan Program	13,324,000	N/A
Rural Housing Loan Program	9,450,000	N/A
Indian Land Acquisition Loan Program	7,450,000	12,000,000
Emergency Loan Program	4,171,000	N/A
Farm Ownership Loan Program	3,433,000	N/A
Soil and Water Loan Program	105,000	N/A
Food and Nutrition Service	$289,110,000	$309,080,000
Food Stamp Program (294,000 participants)	152,000,000	152,000,000
Child Nutrition Programs	67,000,000	81,000,000
Food Distribution Program on Indian Res.	50,160,000	54,150,000
Supplemental Food Program for Women, Infants and Children	19,450,000	21,330,000
Title VI Indian Nutrition Programs	500,000	600,000
Soil Conservation Service	$ 20,253,000	$ 20,253,000
Watershed Program	16,390,000	16,390,000
Conservation Operations	3,000,000	3,000,000
Soil Surveys	625,000	625,000
Resource Conservation and Development	228,000	228,000
Agricultural Stabilization and Conservation Service	$ 5,842,407	N/A
Agricultural Conservation Program		
Emergency Conservation Program		
Water Bank Program		
Forest Service	$ 3,116,000	$ 3,291,000
Job Corps	1,675,000	1,720,000
Senior Community Service Employment Program	550,000	690,000
Forest and Plant Management Surveys	275,000	280,000
Rural Planning Fire Protection	130,000	130,000
Youth Conservation Corps	112,000	109,000
Land Management Planning	80,000	70,000
Watershed Planning	30,000	30,000
Long Range Planning	10,000	9,000
Urban Forestry	8,000	8,000
Other Forestry Assistance	130,000	130,000

ATTACHMENT C

DEPARTMENT OF AGRICULTURE (continued)

	FY83	FY84
Cooperative Extension Service	$ 2,700,000	$ 2,700,000
Smith-Lever Funds for County Agents		
Rural Electrification Administration	$ 787,000	$ 0
Electric Power Loan to Papago Reservation		
Agricultural Cooperative Service	$ 7,500	$ 0
Foreign Agricultural Service	$ 300	$ 300
Minority and Small Business Enterprise Export Program		
**********		
TOTAL DEPARTMENT OF AGRICULTURE INDIAN BUDGET	$612,572,937	$347,324,300

N/A = FY84 budget figure for FMHA, ASCS, and ACS are unavailable or incomplete, thus affecting the total FY84 Buget for USDA.

ATTACHMENT D

DEPARTMENT OF EDUCATION

	FY83	FY84
Office of Elementary and Secondary Education	$316,400,000	$355,100,000
Indian Education Act	64,700,000	65,900,000
Impact Aid		
Maintenance and Operations	140,000,000	195,000,000
School Construction/Repair	33,500,000	8,500,000
Chapter 1 Compensatory Education	54,300,000	59,800,000
Chapter 1 Comp. Ed. BIA Set-Aside	19,900,000	21,900,000
Chapter 2 Block Grants	4,000,000	4,000,000
Office of Postsecondary Education	$ 48,300,000	$ 49,000,000
Higher Education Act Title IV Student Aid	45,000,000	45,600,000
Guaranteed Student Loans		
Pell Self-Help Grants		
Work-Study Programs		
Higher Education Act Title III	2,700,000	2,700,000
Institutional Aid		
Higher Education Act Title IX	300,000	400,000
Graduate and Professional Opportunities Program		
Minority Institutions Science Improvement	300,000	300,000
Office of Special Education and Rehabilitative Services	$ 30,400,000	$ 32,200,000
Education for the Handicapped BIA Set-Aside	10,100,000	10,600,000
Education for the Handicapped	7,400,000	7,800,000
Rehabilitation Services to States	6,100,000	6,500,000
Special Program for the Disadvantaged	5,600,000	5,900,000
Rehabilitation Services to Tribes	700,000	900,000
National Institute for Handicapped Research	500,000	500,000
Office of Bilingual Education and Minority Languages Affairs	$ 10,500,000	$ 10,000,000
Bilingual Education	10,500,000	10,000,000
Office of Vocational and Adult Education	$ 7,500,000	$ 7,700,000
Vocational Education	6,600,000	6,700,000
Adult Education	900,000	1,000,000
TOTAL DEPARTMENT OF EDUCATION INDIAN BUDGET	$413,100,000	$454,000,000

NATIONAL HEARINGS SITES:

INDIVIDUALS AND ORGANIZATIONS

PROVIDING TESTIMONY

NATIONAL HEARINGS SITES: INDIVIDUALS AND ORGANIZATIONS PROVIDING TESTIMONY BEFORE THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES

PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES NATIONAL HEARINGS SITES

LOCATION:	DATE:
MERIDIAN, MS	DECEMBER 8, 1983
OKLAHOMA CITY, OK	JANUARY 9, 1984
PHOENIX, AZ	JANUARY 16, 1984
BILLINGS, MT	JANUARY 30, 1984
SAN DIEGO, CA	FEBRUARY 6, 1984
ALBUQUERQUE, NM	FEBRUARY 16, 1984
ST. PAUL, MN	FEBRUARY 23, 1984
RAPID CITY, SD	MARCH 1, 1984
RENO, NV	MARCH 5, 1984
WASHINGTON, D.C.	MARCH 15, 1984
PAGE, AZ	APRIL 9, 1984
WINDOW ROCK, AZ	APRIL 10, 1984
SPOKANE, WA	APRIL 26, 1984
ANCHORAGE, AK	MAY 10, 1984
SAN FRANCISCO, CA (primarily targeted at private sector)	MAY 14, 1984
SAN FRANCISCO, CA (primarily targeted at state & local governments)	MAY 15, 1984

INDIVIDUALS & ORGANIZATIONS PROVIDING TESTIMONY BEFORE
THE PRESIDENTIAL COMMISSION ON INDIAN RESERVATION ECONOMIES

MERIDIAN, MISSISSIPPI — December 8, 1984

Witnesess

Phillip Martin, Chairman, Choctaw Nation
Charles Mc Lain, Mayor, City of Philadelphia
Robert Thomas, Attorney
George Gibbon, Purchasing Agent, Packard Electric
Lester Dalme, Plant Manager, Choctaw Tribal Assembly Plant
Eddie Tullis, Chairman, Poarch Band of Creeks

Total Witnesses -- 6

OKLAHOMA CITY, OKLAHOMA — January 9, 1984

Witnesses

C.O. Tillman, Chairman, Otoe-Missouria Nation
Charles Redcorn, Indian Mineral Association
Marcellous Chouteau, Chairman, Kaw Nation
M. Robert Rowell, Apache Meat Processing Company
Diane Kelly, Cherokee Nation
Billy Evans Horse, Chairman, Kiowa Nation
Jennings David Colbert, Citizens Bank of Oklahoma
Tom Cole, Office of Congressman Mickey Edwards
Bernard Kahrahrah, Chairman, Comanche Nation
George Tallchief, Chairman, Osage Nation
Jack Thorpe, Chairman, Sac and Fox Nation
Dan Little Axe, Governor, Absentee Shawnee Nation
John Thomas, Chairman, Kansas Kickapoo Nation
Gregg Symons, Vice-President, Bank of Oklahoma

Total Witnesses -- 14

PHOENIX, ARIZONA — January 16, 1984

Witnesses

Paul Klores, Vice-President, Valley National Bank
Dana Norris, Chairman, Gila River Indian Reservation
Alexander Ami, Manager, Hopi Electronics
Gerald Anton, Chairman, Salt River Indian Reservation
Joyce Pipkin, Manager, Induction Billet Corporation
Fred Drye, Vice-Chairman, Kaibab-Paiute Nation
Debbie Broken Rope, Staff Assistant to the Committee on Interior & Insular Affairs
Billy Mills, Co-Founder, Billy Mills National Indian Youth Leadership Program
Ira Englander, Co-Founder, Billy Mills National Indian Youth Leadership Program

(continued)

PHOENIX, ARIZONA -- continued

Witnesses

Anthony Drennan, Chairman, Colorado River Indian Nations
Harold Joseph, Director, Office of Economic Development, Hopi Nation
Francisco Jose, Vice-Chairman, Papago Nation
Ronnie Lupe, Chairman, White Mountain Apache Nation
Ben Kill, Chairman, Fort McDowell Indian Nation
Milton Campbell, Chairman, Tonto Apache Nation
Norm Sattem, Manager, Empire Machinery Company
Ben Fisler, General Manager, Southwest Solvent, Inc.
John Thierbach, General Manager, White Eagle Enterprises
Luther Lipka, Manager, Forest Homes, Inc.
Ned Anderson, Chairman, Inter-Tribal Council of Arizona and San Carlos Apache Nation

Total Witnesses -- 20

BILLINGS, MONTANA January 30, 1984

Witnesses

Del Gage, State Senator, District 5, Montana
Charles Archambault, Archambault & Co.
Caleb Shields, Inter-Tribal Board Policy Chairman
Norman Hollow, Fort Peck Assiniboine Sioux Chairman
Sidney D. Morris, A & S Tribal Industry
John Windy Boy, Chairman, Chippewa Cree Nation
Dr. Joseph T. McDonald, President, Salish & Kootenai College
Windy Shoulderblade, Chairman, Executive Committee, Northern Cheyenne Nation
Donald Stewart, Chairman, Crow Nation
Ted Hogan, Secretary, Crow Nation
John Washakie, Shoshone Business Council
Dennis Sun Rhodes, Councilman, Arapahoe Business Council
Alton Harrison, Director, Economic Development Division, Shoshone Arapahoe Business Council
Suzanne Trusler, Morning Star Enterprise
Earl Old Person, Chairman, Blackfeet Tribe
Stan Juneau, Blackfeet Indian Writing Company
Toby Black, Black Lumber Co.
Carroll Horn, Horn Creek Chemical and Mud
Jim Altenhofen, President, American Indian Agricultural Credit Consortium
Beverly Bad Horse, Native American Satellite Network
David Small, President, Native American Satellite Network
John Crane, Technical Director, Native American Satellite Network
John Burke, Shell Mining Company
Bill Houghland, Shell Oil Company
Evert Makinen, Raven Exploration Company
Tom Acevedo, Tribal Attorney
Pat Stands, Member, Management Committee, Raven Oil
Tom Assay, Rosebud and Treasure Counties and Northern Cheyenne Reservation

Total Witnesses --28

SAN DIEGO, CALIFORNIA February 6, 1984

Witnesses

Joseph Wilson, President, Wil-Jo, Inc.
Martha Wetmore, Chemehuevi Indian Nation
Pam Arviso, Southern California Tribal Chairmen's Association
Dennis Turner, Senior Planner, Southern California Tribal Chairmen's Association
Bob Rodriguez, Chairman, All Mission Housing Authority
Julie Benedict, Commissioner, All Mission Housing Authority
Bo Mazzetti, Proprietor, Rincon Reservation
Eric Natwig, President, First American Capital
King Freeman, Chairman, Pala Band of Mission Indians
Patricia Dixon, Chairperson, Pauma Band of Mission Indians
Steve Esquibel, Tribal Administrator, San Pasqual Band of Mission Indians
Ron Peralta, Chairman, San Pasqual Band of Mission Indians
Art Bunce, Tribal Attorney, Barona Band of Mission Indians
Peter McDonald, Director of Sales, Cataract, Inc.
Leo Calac, Owner, The Indian Shop
Mitzie Magante, Chairman, La Jolla Band of Mission Indians
Charles McGowan, San Diego Division Manager, Conrock Company
Sunny Velasquez, Morongo Indian Reservation
Raymond Basquez, Pechanga Indian Reservation
Charles Scott, Attorney, Director of California Indian Legal Services

Total Witnesses -- 20

ALBUQUERQUE, NEW MEXICO February 16, 1984

Witnesses

Alex Mercure, Secretary of Commerce & Economic Development, Office of Governor Anaya
Michael Fairbanks, President, New Mexico Indian Business Association
Merle Garcia, Governor, Acoma Pueblo
John Olguin, Member, Isleta Pueblo Council
Delfin Lovato, Chairman, All Indian Pueblo Council
Ramon Garcia, Governor, Santo Domingo Pueblo
Betty Walker, Superintendent, Southern Pueblos Agency
Carlos Vigil, Governor, Nambe Pueblo; Chairman, Eight Northern Indian Tribes Pueblo Council
Lloyd New, Chairman, Indian Arts and Crafts Board
Governor Pedro, Sr., Laguna Pueblo
George Wicker, Executive Director, All Indian Pueblo Cultural Center
Rob Burpo, Dean Witter Reynolds
Noel Behne, First National Bank of Albuquerque
Donald Tanner, Little Bear Enterprises, Inc.
Donald Bradley, Bradley Construction, Inc.
Roger Tsabetsaye, Zuni Nation
Dave Warren, Director of the Cultural Studies Center, Institute of American Indian Arts
Martha Hill, Past President, Indian Arts and Crafts Association

(continued)

ALBUQUERQUE, NEW MEXICO -- continued

Witnesses

Senator John Pinto, New Mexico State Senate
Kathryn Harris Tijerina, Director, Indian Resource Development

Total Witnesses -- 20

ST. PAUL, MINNESOTA February 23, 1984

Witnesses

Gordon Thayer, Chairman, Lac Courte Oreilles Nation
Rick Baker, Council Member, Lac Courte Oreilles Nation
Don St. Clair, Owner, Don's Television
Will Antell, Manager of Special Programs for Minnesota Department of Education
Reuben Snake, Chairman, Winnebago Nation
Purcell Powless, Chairman, Oneida Nation
Don Kettler, Rural Ventures, Inc.
Jim Thannum, Planner, Bad River Nation
Apesanahkwat, Chairman, Menominee Nation
Joseph Reed, Tribal Planner, Menominee Nation
Evan Burr, Corporate Commissioner, Mille Lacs Reservation
Norman Crooks, Chairman, Shakopee Mewakanton Community
Herb Dorr, President, OHHE Associated
Roger Jourdain, Chairman, Red Lake Band of Chippewas
Wilham Riendl, Consultant, Fond du Lac Manufacturers
Burt Wolf, Lac Courte Oreilles, Private Sector
Jose Cruz, Director of Hispanic Concerns, Minnesota Hispanic Chamber of Commerce

Total Witnesses -- 17

RAPID CITY, SOUTH DAKOTA March 1, 1984

Witnesses

Arthur Lacroix, Mayor of Rapid City
Julie Lichter, Representing Senator James Abdnor
Dr. Arthur Zimiga, Economic Development Specialist, Rapid City Indian Service Council
Richard J. La Fromboise, Chairman, Turtle Mountain Chippewa Nation
John Steele, Vice Chairman, Oglala Sioux Nation
Mrs. Emma Tibbets, President, Winona Club, Sioux Indian Cultural Center
Eva Nichols, President, WICA Leadership Council
Paul Winston, President, Winston International
William Junor, Executive Vice-President, Winston International
James Edwards, Vice-President for Operation, Winston International
Dr. Lionel Bordeaux, President, Sinte Gleska College
Ed Danks, President, Eagle Nest Construction
Stanford Adelstein, Agricultural Developer, Businessman
Russell Hawkins, Chairman, Sisseton-Wahpeton Sioux Nation

(continued)

RAPID CITY, SOUTH DAKOTA -- continued

Witnesses

Tom Loomis, Director, Wambli Archery Company
Roger Bordeaux, Association of Contract Tribal Schools
Lou Dillon, Association of Contract Tribal Schools
Jim Stone, Association of Contract Tribal Schools
Carl Waln, Cattleman
Leonard Hare, Jr., Cattleman, Yankton Sioux Nation
Webster Two Hawk, Chairman, Rosebud Sioux Nation
Harley Good Bear, President, Fort Berthold Community College
Nicholas Chapman, District Manager, Armco Building Systems
John Fredericks, Jr., President, Fort Berthold Land and Livestock Association
Louis Twiss, President, Oglala Sioux Livestock and Landowners Association
Morgan Garreau, Chairman, Cheyenne River Sioux Nation
Harold Condon, Cheyenne River Sioux Nation
Eagle Hunter, Cheyenne River Sioux Nation
Tom Iron, Standing Rock Sioux Nation
Earl Silk, Standing Rock Sioux Nation
Bob Buffalo Boy, Standing Rock Sioux Nation
Karen Means, Executive Director, Rapid City Indian Service Council
Patrick Spears, Chairman, Lower Brule Sioux Nation
Mario Gonzales, Attorney, Lower Brule Sioux Nation
Pete Shelton, Owner, Native American Office Supplies
Colleen Cut Schall, Lakota Jewelry Visions
Mitchell Zephier, Lakota Jewelry Visions
John Lytle, First American Alliance
Chuck Jacobs, First Nations Financial Project

Total Witnesses -- 39

RENO, NEVADA March 5, 1984

Witnesses

Sheri Frazier, Business, Smoke Shop
Shane Del Cohen, Reno-Sparks Indian Development Investment Circle
Millie Sunday, Ottwater Engineers, Inc.
Dr. Ronald Ott, Ottwater Engineers, Inc.
Dr. John Humphrey, Ottwater Engineers, Inc.
Mark Radcliffe, Attorney, Brobeck, Phelger & Harrison
Bob Posner, Director, Center for Indian Economic Development
Jerry Millett, Chairman, Shoshone Duckwater Tribal Council
Sherry Smith, Shoshone Duckwater Tribal Council
Roy Garcia, Chairman, Pyramid Lake
Arthur Lewis, Economic Development Specialist, Chairman, Covelo Nation
La Nada, Tribal Survival Economies System
Alvin James, Tribal Survival Economies System
Paul Gary Beck, Karwk Tribal Council
John Reardon, Director, Commission on Economic Development for State of Nevada
Linda Howard, Chairperson, Yerington Paiute Tribal Council

(continued)

RENO, NEVADA -- continued

Witnesses

Dale Risling, Hoopa Valley Business Council
Robert Frank, Chairman, Washoe Tribal Council
Alvin Moyle, Chairman, Fallon Paiute Shoshone Business Council
Wayne Johnson, Business Manager, Walker River Paiute
Richard Rossback, Owner, Anish-in-ab-a, Satellite Communications
Stephanie Wasile Mumm, American Indian International Development Corporation

Total Witnesses -- 22

WASHINGTON, D.C. March 15, 1984

Witnesses

Larry Burgess, Chairman, Chitimacha Tribal Council
Alan Parker, President, American Indian National Bank
Pat Gerard, American Indian National Bank
Jonathan Taylor, Chairman, Eastern Band of Cherokees
Helen Sheirbeck, Regional Director, American Indian Nations Save the Children Federation
William "Buffalo" Tiger, Chairman, Miccosukee Nation
Lee Tiger, Miccosukee Nation
John Stevens, Governor, Indian Township Passamaquoddy Reservation
Karl Nicholas, Passamaquoddy Reservation
Leonard Garrow, Chief, St. Regis Mohawk Nation
Lawrence Pyke, St. Regis Mohawk Nation
Joe DeLaCruz, President, National Congress of American Indians
Walter K. Babcock, First Councilman, Narragansett Nation
Louis R. Bruce, President, Native American Consultants, Inc.
Michael Edmonds, Director, Employment and Training Director for the Boston Indian Council
Rex Evans, Director, United South and Eastern Tribes
John Meyers, Sella & Meyers & Associates
LaDonna Harris, President, Americans for Indian Opportunity
Elmer Savilla, Executive Director, National Tribal Chairmen's Association
Lincoln White, Executive Director, National Advisory Council on Indian Education

Total Witnesses -- 20

PAGE, ARIZONA April 9, 1984

Witnesses

Paul D. Barber, Lawyer, Rodey, Dickason, Sloan, Akin & Robb
Travis Parashonts, Parashonts Construction
Francisco Jose, Vice Chairman, Papago Nation
Stewart Pike, Committee Member, Ute Business Committee
Tully Lameman, Executive Director, Utah Navajo Development Council
John Knight, Vice President, Telum Oil Company
Lynn Lee, Director, College of Eastern Utah
Geneal Anderson, Acting Chairman, Paiute Nation

(continued)

PAGE, ARIZONA -- continued

Witnesses

Arthur Monson, Paiute Nation
Mary Ellen Sloan, Lawyer, Paiute Nation
Dr. Raymond Farnsworth, American Indian Services
Bruce Parry, Director, Utah Division of Indian Affairs
George Abe, Natural Resources Manager, Bureau of Indian Affairs
Sam Little, Retired Administator
Dr. Dennis Little, Public Health Service
Herb Frazier, Principal, Mexican Hat Elementary School
David Leavitt, Program Advisor, Special Programs Indian Vocation
Charley A. DeJolie, Chairman, DeJolie Enterprises
Tully Haswood, Chairman, Chapter Development Committee, LeChee Chapter of the Navajo Nation
Harry Sloan, Chapter President, Navajo Nation
Robert Roessel, Salt River Project
Louise Yellowman, Coconino County Board of Supervisors
Joe Dayzie, Council Delegate of Red Lake, Chapter #4, Tonalea

Total Witnesses -- 22

WINDOW ROCK, ARIZONA April 10, 1984

Witnesses

Peterson Zah, Chairman, Navajo Nation
Roman Bitsuie, Chairman, Economic Development
Ed Richards, General Manager, Navajo Forest Products Industry
Malcolm Dalton, General Manager, Tribal Utility Authority
Art Allison, Agricultural Products Industry
Andy Wilson, President, Concerned Indian Business Persons
Henry Whipple, Manager, Ft. Defiance Housing Corporation
Allan S. Begay, President, Dineh Cooperatives
Leslie J. Nelson, Photographer, Nizhoni Photography
William H. Govette, Vice-President, General Dynamics Pamona Division, Fabrication/Assembly
Michael T. Allison, Division of Economic Development, Navajo
Michael Nelson, Navajo Westerner
Milt Harshe, Executive Vice-President, New Mexico Association Tobacco & Candy Distributors
William Krumm, President, Krumm Distributing Company
Dr. Lawrence Isaac, Jr., President, Navajo Business Association
Bella Rogers McCabe, Big Five Company
Edward McCabe, Big Five Company
David John, Big Five Company
David Lester, Executive Director, Council of Energy Resource Tribes
Dean Jackson, President, Navajo Community College
Leonard Arviso, President, Sacred Mountain Supply Company
J. Tonney Bowman, Attorney, Navajo Tribal Courts
David J. Tsosie, Chairman, Navajo Nation Education Committee

Total Witnesses -- 23

SPOKANE, WASHINGTON April 26, 1984

Witnesses

David J. Matheson, Chairman, Coeur d'Alene Nation
Allen Pinkham, Chairman, Nez Perce Nation
Conrad Edwards, Executive Director, Tribal Employment Rights Organization
Joseph Felsman, Chairman, Confederated Salish & Kootenai Tribes
Fred Houle, Executive Treasurer
Ron Trosper, Financial Analyst of Confederated Salish & Kootenai Tribes
Pat Quincy, Tribal Manager, Squaxin Island
Ron Allen, Tribal Chairman, Jamestown
Larry Lewis, Planner
David Whitner, Chairman, Squaxin Island
Eric Durbin, Quileute
Walter Jackson, Quileute
Fred Lane, Vice Chairman, Lummi Nation
Dixie Cooper, Vice Chairman, Kootenai Nation of Idaho
Allen Pinkham, Chairman, Columbia River Intertribal Commission
Tim Wapato, Executive Director
John Platt, Policy Assistant
Pat Morrell, Loan Program Director, Columbia River Intertribal Commission
Lena Landry, Treasurer
Arvado Toutstops, Tribal Planner
John Platt, Council Member, Puyallup Nation
Stan Jones, Sr., Chairman, Tulalip Tribe, Inc.
Del Moss, Planner, Tulalip Tribe, Inc.
Ben Mulder, Vice President & Manager, Lynden National Bank
Douglas Taylor, General Manager, Chehalis Indian Tribal Enterprise (C.I.T.E)
Kenneth Brown, President, Chehalis Indian Tribal Enterprise (C.I.T.E.)
Eddie Palmanteer, Jr., Fiscal Resources Department Director
Charles Yeahauo, President, Native American Business Alliance;
Charles de Montigny, Vice Chairman, American Indian Council of Architects & Engineers
Lee Jacobsen, East Slope Taxpayers Association
Bill Big Springs, Sr., Glacier County Commissioner, Montana
Lonnie James, Confederated Tribes
Bernie Whitebear, Executive Director, United Indians of All Tribes Foundation
Skip Scannon, United Indians of All Tribes Foundation

Total Witnesses -- 34

ANCHORAGE, ALASKA May 10, 1984

Witnesses

Daniel Alex, President, Eklutna, Inc.
Dorothy Cook, Vice President, Eklutna, Inc.
Ted Burton, Attorney, Eklutna, Inc.
Edward Claplanhoo, Vice Chairman, Makah Nation
Allen L. William, President, Sealaska Business Investment Corporation

(continued)

ANCHORAGE, ALASKA -- continued

Witnesses

Mary Lou Lindahl, Manager, Alaska Native Arts and Crafts
Ralph A. Johnson, President, Salamat of Native Association, Inc.
Andrew Hope, President, Sitka Community Association
Nelson Frank, Board Member, Sheetika
James Patlan, Pomo Nation
Caleb Pungowiyi, President, Kawerak, Inc.
Charles Edwardson, Jr., Owner, CircumPolar Group
Norm Nault, Executive Director, Kenaitze Indian Tribe
Jean Flanagan, Executive Director, Institute of Alaska Native Arts
Rose Atuk Fosdick, Services Director, Institute of Alaska Native Arts
Atuk Fosdick, Services Director, Institute of Alaska Native Arts
Richard E. See, Businesss Analyst, Fairbanks Native Association, Economic Development Program
Anthony R. Tilma, Financial Analyst, Fairbanks Native Association, Economic Development Program
Bartz Englishoe, Land Manager, Bethel Native Corporation
Evelyn Hash Pete, Shareholder, Ahtna, Inc.
Janie Leask, President, Alaska Federation of Natives
Donna Murphy, Eklutna, Inc.
Rosita Worl, Social Anthropologist, Chilkat Institute, Alaska Native News

Total Witnesses -- 23

SAN FRANCISCO, CALIFORNIA — May 14, 1984
Private Sector

Witnessess

Don Walsh, Vice-President, Community Development Department, Bank of North America, San Francisco, CA
Tom Ratcliffe, Boettcher and Company
Don Arnold, Boettcher and Company
Vien Ilano, Fifth Avenue
Jeanette Henry, Indian Historian Press
Rupert Costa, Indian Historian Press
Claude Neely, Regional Land Man, Amoco Production Company
Lyman F. Pierce, Executive Director, Los Angeles Indian Center, Inc.
Stephen Stallings, President of the United Indian Development Association (UIDA)
Eric Natwig, President, First American Capital
Ben Mudler, Vice-President, Ranier Bank
Linda Massey, Land Manager for Exploration, Atlantic Richfield Company
John Atkins, Vice-President, Utah International, Inc.
Ira Englander, President of Englander Productions, Los Angeles, CA
Walter Holmes, Natural Resource Consultant
Judith Kammins Albietz, Albietz and Consultants

Total Witnesses -- 16

SAN FRANCISCO, CALIFORNIA
State & Local Government

May 15, 1984

Witnesses

Randy Scott, NW Project Manager, Commission on State Tribal Relations
Dr. Edd Brown, Office of the Governor, State of Arizona
Mahlon Swentkofske, County Commissioner, Cass County, Minnesota
Dennis Drayney, Duchenesne City Attorney, Duchenesne County, Utah
Neal Domgard, Unitah City Commissioner, Unitah County, Utah
Bruce King, Economic Developer, Oneida Nation
Michael Clements, Second Vice Chairman, Confederated Tribes of Warm Springs
Doug McClelland, Fiscal Services Manager, Confederated Tribes of Warm Springs
Paul Beck, Chairman, Karuk Nation
Dale Risling, Councilman, Hoopa Nation
J.M. Williams, Senator, Idaho State Senate
Mark Powless, Chairman, National Coucil Task Force on Gaming on Indian Reservations
Mike Clingman, Senior Administrative Assistant, Office of the Governor, State of Oklahoma
Odie Nance, Chairman, Oklahoma Tax Commission
Lee Jacobsen, Secretary, East Slope Taxpayer's Association, MT
Vernon T. Johnson, Executive Director, California Council of Tribal Governments

Total Witnesses -- 16

OVERVIEW OF THE
PRIVATE SECTOR OPPORTUNITIES
AND
CONSTRAINTS STUDY

PRIVATE SECTOR SURVEY OF OPPORTUNITIES AND CONSTRAINTS

Overview

The Commission asked the Rensselaerville Institute in Rensselaerville, New York to organize and carry out business opportunities and constraints studies on several reservations from a private sector business perspective. The Institute obtained the services of highly qualified experts and practitioners: venture capitalists, financial analysts, business developers, businessmen, and specialists with other entrepreneurial backgrounds. All had first hand experience with both small and large business firms. Some had experience with business development among minority and other disadvantaged groups and regions, although not necessarily in Indian country.

On-site visits were made to four reservations and two tribal areas during the period from May to August 1984. Specific opportunities and constraints were identified and analyzed based on actual and current conditions. Some of the problems noted, as well as many of the opportunities, are site-specific, inherent to the people involved and the setting and the modes of operation. However, the locations visited represented a broad sample of reservations, ranging from large to small in both population and area, in various geographic locations throughout the United States, with various types of resource based economies and with various types of businesses under way or planned.

One or more members of the team visited each of the sites. In some cases pre-visits were made to collect data. In all instances, specific focus opportunities were identified in advance. However, during each visit specific efforts were made to discover new opportunities. After the site visits, follow-up was carried out in a number of ways, including additional visits by team members, by specific consultation site visits or exchanges of information with operational experts in specific businesses, by review of financial and other plans, etc.

Data sources included direct observation of on-going businesses, a variety of meetings with business leaders, tribal officials, customers, and tribal staff supporting economic development, and comprehensive analysis of plans and documents for specific businesses. The emphasis was empirical. The teams sought to observe the realities present on-site which were actually blocking opportunities and causing constraints.

The teams made a deliberate effort not to be guided by the literature of economic development problems on Indian reservations, or by constantly repeated legal and institutional themes. They also made a conscious decision to go beyond the sometimes conventional wisdom of many "experts" on Indian business development, who may be more experienced on advising tribal organizations on how to get grant funds than they are at starting viable businesses.

Information from this analytical track of the Commission's work generated data from a different perspective--private business expertise-- as compared to the Commission's other data sources providing information from the public hearing process, the literature review, the governmental perspective, etc. A theme which repeatedly appeared in the testimony given in the hearing process, in the literature, and expressed in the views of many government officials, was that one of the major problems for Indian reservation economic development was the difficult and

limited access to capital. In actuality, however, what the experienced businessmen found was that easier access to capital, by itself, would do little to mitigate many of the problems and obstacles holding back business development on Indian reservations.

While legal and institutional issues may not be directly blocking many business opportunities, in a broader sense the private sector experts felt that they were clearly implicated. They felt that most if not all of the problems impeding the opportunities they examined could be traced to two institutional images: one involving the federal government and Indian reservations, and the other involving Indian tribes and Indian businesses. They concluded that successful businesses on Indian reservations would not be brought about by "fine tuning" present programs and solutions, by making a few more grants, and by creating easier access to capital. They felt that some major steps are needed to dramatically redefine the relationships between the federal government and the Indian reservations on the one hand, and between the Indian tribes and Indian businesses on the other.

Fundamental differences between businesses and public service agencies were also identified. The following chart illustrates some of these basic differences:

Public Service Agencies	Businesses
Budget based	Sales based
Build businesses	Reduce costs, increase sales
Satisfy funders	Make and keep customers
Indirect relationship between funding & performance	Direct relationship between funding & performance
Organizations compete	Products compete
Generally convey value of product	Generally add value to produce
Rewarded for organizational visibility	Rewarded for product visibility
Diffuse focus	Narrow focus

Major Constraints Identified

On the reservations visited, the private sector teams identified seven major constraints which they found confronting the opportunities which tribal leadership and individual Indians wished to pursue. Since these constraints were so pervasive on all the sites visited, a reasonable assumption is that they occur widely on Indian reservations throughout the United States.

In a descending order of importance, the seven identified constraints were as follows:

1. An Insufficient Number of Entrepreneurs and Chief Executive Officers

There is no substitute for a competent entrepreneur whether it is a new business start, the turn-around of a failing business, or merely the application of sound business principles to the running of successful enterprises.

In looking at both new and existing businesses, the teams found that the lack of a qualified business leader -- the in-place person to run the business -- is a very key factor. In some cases they found people in place who were simply not qualified to run that business. In many new ventures, they found job descriptions rather than a person, and often faced the belief by tribal officials and economic or business planners that it was not necessary to have the chief executive officer in place prior to raising the capital for the enterprise.

Part of the problem appeared to be due to the way in which many businesses are selected on Indian reservations. In some cases activities are chosen because they are in vogue for purposes of federal funding, e.g., motels and tourist centers, industrial parks, etc. In others they come from a vision of political leadership or a presumed consumer need. Very seldom, however, does it appear that tribes have started with an entrepreneur who had his or her own interest and allowed or encouraged businesses to be built around that person.

It should be stressed that the teams found a shortage of experienced entrepreneurs and chief executive officers on reservations. However, they did not find a lack of talent or potential for becoming successful entrepreneurs of tribal or individual enterprises.

A problem noted was that not only is entrepreneurial capacity not nurtured, but that it may be undervalued. Some people with whom the teams met defined the lack of entrepreneurs on reservations by their belief that they are an undesirable element. In contrast to the economic development orientation by many governmental people, both tribal and federal, who seek a broad public good, entrepreneurs were characterized as narrow-minded people preoccupied with making money.

Another reason for a shortage of entrepreneurs on many reservations is that they do not find the bureaucratic life congenial. Many will simply not put up with the excessive regulations and delays to get permits and leases, or to accept the review processes by people at the tribal and federal agency level not well-versed in business. Several cases were noted where individuals tried to work within the tribal framework only to leave, often to set up successful businesses off the reservation. It was felt that tribal governments and their economic development staffs may have consistently underestimated the presence, or the potential, of independent Indian businessmen on and near the reservations. There may be more business vitality in the Indian small business community than in the tribal businesses, but they are far less visible.

When Indian entrepreneurs were identified, it was discovered that they had found ways to overcome many of the obstacles cited by government officials, economic planners and consultants. They had managed to get through the bureaucratic regulations and lease land. They had managed to get bank loans. They had managed to offer goods or services with quality, quantities and prices such that they made a profit.

However, these people are busy being successful. They don't take the time to testify before commissions, or to raise their voices in protest. They see life as offering opportunities rather than problems, and they are at work implementing such possiblities to their benefit, and to the benefit of their surrounding communities.

2. Lack of Understanding of Business Principles by a Sufficient Number of Tribal Staff

Most of the people whose responsibilty was to encourage economic development that the teams met, either in tribal or federal government, or serving as consultants to these governmental levels, had never been part of a successful business. Most had come either from an academic or a public service agency background. Most describe themselves as in the world of "economic development", defined as a realm in which studies and plans are undertaken which will lead to increased development. Few come from the world of business enterprise. In some measure, this is because education and "professional" credentials are given more weight than experience in hiring and assigning these people.

The teams found the gaps between economic planning and business development experience to be awesome, and explained why so many businesses are ill-founded. (See the chart in the Overview section for some of the major differences between public service agencies and businesses.) The public service agency was never intended to operate using business principles. It is ill-equipped to manage, evaluate, and counsel private businesses. Different people, with different skills are needed. Time after time, the teams were shown "business plans" which amounted to funding proposals to the federal government. They were long on philosophy and short on strategy, long on budget justification and short on income justification. Business planning was found to be particularly weak in the marketing area. One proposal indicated "The initial objectives of this operation are to create a fad", with no apparent knowledge that most businesses tap markets rather than create them. Another plan stated: "The size of our market is governed by how much we can produce" -- thus dismissing the marketing problem as incidental; whatever they can make, someone will buy. The list of such statements was numerous.

Where market research was included, generally industry standards were used to derive size and share of the market, with no evidence that a given product and pricing structure would lead to direct sales. There was more of a notion of providing social service delivery systems for clients, than of selling a product or service to customers. The teams found little sensitivity to the notion of needing a competitive edge so the customer would voluntarily wish to purchase a product or service. The lack of justification of revenue to the enterprise appears to be the major obstacle to capital. The emphasis on tribal sovereignty and the inability to mortgage resources speaks to the problem of collateral for business loans. The bankers the teams met were far more concerned with the problem of generating enough cash to repay the loan. They had no desire to foreclose on security. They wanted to see business and marketing plans which assures them of an adequate emphasis on sales as the basis of business health.

A second area in which business principles are not followed is cost control. Tribally run businesses seem particularly susceptible to an overdose of capital investment. Using the budget based concepts of government agencies -- e.g., get the costs as high as possible since that is what governs the size of the grant -- a plant and equipment budget is set in place which is far more lavish than the business

needs at that point in time. In the private sector, lowering of costs is an effective way to increase revenues. Other areas where cost control was found deficient included accounting, production, and personnel.

Another problem identified was the tendency to focus on "big picture" planning. The result of this is a diffusion of effort. Time and funds are spread very thinly over a number of possibilities that could better be spent by concentrating on a few of the better opportunities.

Another point made by the teams was that in addition to using proven business practices for tribal business enterprises, tribes would also benefit if they applied these principles in managing their internal assets. For example, the tribes visited do not exert pressure to achieve concessions at banks where they are major depositors. Therefore tribal cash assets are an underused resource.

3. Tribal Government Directly Involved in Business

The teams of private sector businessmen felt strongly that tribal politics and business simply don't mix. The structural nature of the public service and business operations are distinct. (See the chart in the Overview section.) Tribal governments are political entities, subject to the natural tendencies of politics. The use and value of patronage, the short-run perspective, and a widely diffused set of constituents and agendas make singular concentration by tribal political leaders on a tribal business enterprise difficult. The issue from the tribal perspective seems to hinge on control. The issue is less over maximizing profitability and more over controlling income allocation. The teams felt that clear distinctions should be made between the protection of rights and the provision of needs. Tribes appropriately pursue political and legal channels to preserve and defend the rights of Indians in areas ranging from civil liberties to resource access and ownership. But beyond establishing certain prerequisites for economic development, these channels have little to offer the development of private sector business. The lack of appropriate distinctions between needs and rights may explain the relatively large roles played by lawyers in making what amounts to business decisions for tribal business enterprises. Empirically, the teams found that while the businesses run by individual Indians were generally smaller than those managed by the tribes, they tended to be more successful. Also, far more often they provide needed goods and services to Indians. It was felt that from an opportunity perspective, they were far better bets for private investment to create new jobs than investment in tribal enterprises.

Some of the solutions which seek to address this difficulty appeared to add to the problem rather than solving it. For example, the creation of buffers between the tribe and the business in the form of independent boards of directors and MESBIC financing tools sometimes create additonal layers of oversight and decision making with which the business must deal.

Joint venturing with the private sector did not always work well either. In such ventures, the tribe often supplies plant and equipment, access to Indian preference markets, relatively low cost labor, and labor-training support. The outside partner often brings the technology and know-how, management and working capital. In many instances the tribe gets the short end of the deal for many of the same reasons that tribal government have difficulty in making their own businesses work -- it

does not have the general business or technical knowledge to forge an equitable business agreement. Also, in such ventures, it often gives away control, or management to people and groups who do not share the tribe's objectives.

The issue is not about structure or personality, however. It involves a basic conflict over goals. Many tribes have as a primary economic development objective the use of business as a means to generate cash directly for other tribal purposes. The reality is that new businesses are not a good means to that end. Even the most successful enterprises need to sustain a cash flow for reinvestment for many years to come. Emerging businesses can best produce economic benefits for the tribe indirectly --by paying taxes rather than by turning over profits, providing jobs, building equity, attracting suppliers, meeting needs and generating a better economic atmosphere.

The teams felt that tribes not only were not good at running businesses, but they were also not good at developing them. Many of the technical assistance programs reviewed, for example, were staffed by earnest and caring young people just a few years out of school. Their dedication, however, is no substitute for experience and wisdom. Also, there appeared to be a tendency to hire more people rather than better people. The teams felt that there would be a strong net gain to the tribes and to the business development climate by replacing any four economic development staff paid $15,000 per year, with one experienced business expert paid $60,000 per year.

Another difficulty which compounded the problem of inadequate technical experience and skills of staff people was the tribes difficulty in hiring first-rate consultants who knew about business principles and who were proficient in specific industrial or technical areas. The teams felt that of the many consultant-prepared market studies, business plans and reports, few were competent.

Many people appear to be hired for their ability to tell the client what they want to hear rather than what they need to learn. Others are hired because they are part of an old boy network of Indian consultants. One economic development consultant to one tribe explained that he did not need to know how to write a business plan since his job was to write proposals. Other consultants indicated that their busiest times of the year were less dependent on business cycles and more dependent on federal grant funding cycles.

Another problem encountered with tribally owned and operated enterprises concerns scale. The tribes appear to be more interested in "instant" large-scale businesses. In part, this is because only larger businesses can attract the attention of key programs in the federal funding agencies such as the Economic Development Administration and the Bureau of Indian Affairs. Tribal political leadership seems attracted to highly visible business activity, often involving a substantial physical plant. However, successful businesses often need to start small and be given the time to grow to a large size.

4. The Bureau of Indian Affairs

The apparent reason for the many layers of BIA approval and involvment in business enterprise on reservations is to stop the tribes from doing something foolish. However, the teams felt that the BIA procedures to "safeguard" are not effective. Most projects, whether wise or unwise, that the tribes really want to initiate do

eventually get funded. However, they do so at much higher costs given the delays caused by the BIA.

What the BIA actually accomplishes is not minimizing mistakes, but rather causes the mistakes to cost more and at the same time prevents a healthy private sector from taking root. The redundancy and overlap of BIA reviews at the agency, area and central office levels prevents much progress. The grant/loan review process, performed by people who do not know business, stops more progress. If it does not stop viable businesses from being set up on reservations, in many cases it deflects it to a non-reservation area. Enterprises promoted by tribal governments appear to fare better with the BIA than those promoted by individual Indians.

5. Land

Land and land use was sometimes seen as a problem, but is not considered a major obstacle. Many people have successfully and expeditiously gained leases. Some have even managed to convince banks to accept the leasehold as collateral. Tribal control of land can be a problem, but not a insurmountable one.

Different and often competing or unclear philosophies about land tenure and use sometimes make it difficult to select the right land for business development. In larger tribes, decentralized or local perspectives often compete with tribal level philosophies about land use. Lease terms are often unfavorable to business because an enterprise needs sufficient length of term, reasonable payments, and sufficient flexibility to handle changes in plant needs over time. Also, land and natural resources are often the subject of legal actions, which creates a negative business climate.

The question of land is important, also, in a deeper sense. The teams found that in no other area of business development is a needed resource so closely tied to cultural beliefs and values. The teams gained a deep respect for the fact that many Indians cannot and will not treat land as an expendable and transferable resource. The main problem is not with the Indian viewpoint toward land. The main problem is a failure by the businessman to appreciate the power and depth of this feeling, and the need to build business development upon different assumptions concerning this particular resource.

6. Sovereign Immunity

This is another problem which the teams discovered low on the list of priorities. This was seen as a problem in the context of creditor recourse, but not necessarily beyond. As noted above, the teams found the lack of good business plans, a shortage of entrepreneurs, and insufficient attention to cash flows to be of far more importance to banks and other investors than questions of collateral.

Sovereign immunity may emerge as more of a problem in such areas as taxation. Tribes justifiably want to tax corporations and enterprises on reservations, especially if non-Indian in nature. However, if such taxes add to rather than displace existing state or local taxes, this creates a strong disincentive for business. However, as more tribes adopt a version of the Uniform Commerical Code and other standard business practices, and as jurisdictional disputes with state and local taxing authorities are resolved, this problem would become less important.

Indeed, sovereign immunity could be turned around to become an opportunity rather

than a problem. Reservations as free-trade zones, or free from Davis-Bacon or union wage requirements, or where tax rates could be negotiated, for example, could have incentive value for locating enterprises there.

7. Location

Reservations can be marginal business sites for some types of enterprises. They are often distant from urban centers which isolates them from access to markets, supplies, technology and know-how, and the preferred residences of many top management prospects, both Indian and non-Indian. However, the private sector teams put this problem low on the list of constraints.

It has an effect on the kind of business rather than on the prospect for business. Industrial park sites, tourism centers, and shopping centers -- three fashionable projects of federal government funding agencies for many years -- were often poor choices for Indian reservations.

On larger reservations, opportunities might exist for some businesses to capture tribal and individual Indian dollars on an import substitution basis. On many reservations, opportunities should be explored for enterprises which might be related to natural or other resources to which the Indians have easy access. Other opportunities should be explored for industries, services or other activities which have less sensitivity to transportation or other locational issues.

VIEWS AND RECOMMENDATIONS MADE BY THE PRIVATE SECTOR TEAM

To overcome some of the major problems and constraints discussed above, the teams made the following illustrative observations and recommendations to the Commission for its consideration.

Relationship Between Indian Tribes and the Federal Government

1. Eliminate all grant and loan programs to Indian tribes which help them to own and operate businesses. Instead, provide funds on a loan and equity investment basis to Indian businesses and local development corporations to do this.

2. Support tribes in the role of defining economic development policy goals and objectives both through limited financial support and by covenants which require businesses receiving governmental loans to contribute directly to the realization of overall objectives.

3. Eliminate all reviews by government employees, at both tribal and federal levels, of loan and grant applications for businesses enterprises. Replace such governmental employee review by private sector experts who are not involved in any network of favoritism and mutual support for projects, and who are guided by business principles and experience.

4. Eliminate the format and content of the proposal in favor of the format and content of the business plan for all requests for support.

5. Eliminate all regulatory aspects by government of reservation economic development that go beyond general regulations of all other private sector businesses and non-profit agencies nurturing economic development.

6. Reduce the federal government's trustee responsibility for investing and protecting Indian resources and funds to a protection but not a management role. Indian tribes should by given the right, authority and responsibility to control their own resources and funds.

7. Reduce or eliminate the proximity to reservations of the federal government, and especially the Bureau of Indian Affairs, through closing of field offices on or near reservations which regulate or support businesses.

8. Encourage tribal governments to define their role in business development to be more in the areas of economic development target setting, and in the areas of setting priorities and incentives for action by business firms, than in the direct management of such business firms.

SOME CONCEPTS FOR TECHNICAL AND FINANCIAL ASSISTANCE TO INDIAN BUSINESSES

1. Seek a combination of funding from the federal and private sector (foundations, non-profit institutions, investment funds and individual corporations) for an Indian Business Development Center(s). The Center(s) would offer both investment funds and expert advice. In most cases, a client would not get one without the other. It would serve Indian-owned and/or operated businesses on or near reservations and also Indian tribes.

2. There might be one Center serving Indian businesses nationwide, or perhaps two regional Centers. The Center(s) would initiate services to a reservation through a relationship with elected tribal leaderships. This could be codified by a memorandum of understanding between the Center and the tribal chairman or council. It would set forth mutual responsibilities and commitments. The Center, for example, could commit to undertake a business audit of the tribal enterprises on a given reservation, and to identify business opportunities and constraints, and lay out the targets which tribal leadership seeks for economic development.

3. The economic development objectives and targets of the tribes could be used in two ways. One, as a guide to select which businesses to help, and two, to use covenants or other mechanisms to ensure that the selected businesses include behaviors, actions and outcomes, consistent with sound business principles, that respond to the reservation's objectives as a requirement for getting help from the Center(s).

The kinds of factors which could be considered for individual business targets in order to conform to tribal economic development goals might include the following:

a. Jobs created (number of jobs, capital cost per job created, skills training provided, etc.);

b. Revenues and benefits generated (tax base or other structure for tribal revenues, presence of otherwise unavailable goods and services, lower prices for and/or higher quality of goods and services, etc.);

c. Performance (return on investment, net profit, etc.);

d. Capital formation (retained earnings, assets created, balance sheet, etc.);

e. Community development relationship (percent of Indian ownership, cultural acceptance, etc.);

f. Economic multipliers (multiplier effects of payroll and local purchases, increasing value of land, etc.);

4. The Center(s) would not provide any funds or technical assistance for general economic planning. However, it might include operating support for the following types of expert assistance programs:

a. Expert assistance to on-going businesses;

b. Programs to nurture entrepreneurs, including entrepreneurial development programs for adults and junior achievement and other programs to nurture younger people;

c. Expert assistance on business starts, including help for individuals who wish to start a business on a small scale, help for businesses which wish to begin on a larger basis, search and specification of the entrepreneur, and referral to the Center's investment fund for partial capital support, when justified;

d. Expert assistance in partnership development, to provide help for tribes considering partnerships with outside corporations, to assist the tribe in striking more reasonable and equitable contracts and joint ventures;

e. A special program on marketing and sales, including workshop and other training efforts for individuals who will staff the businesses in the sales area, and assistance in sales leads in a given industry, both in such preferential areas as "Buy Indian" contracting, as well as in the general marketplace.

5. The Center(s) would have a loan and equity position fund which would provide for several different types of capital assistance or "windows" to which businesses could come. These could include the following:

a. Concessionary loan funds, which might provide loan funds on a concessionary basis, as justified, perhaps down to as low as one or two percent interest, and/or a small administrative fee;

b. Conventional loans, which would be equivalent to a bank loan, with perhaps slightly longer terms, which would be set at about the prime rate, and adjusted to its rise and fall;

c. Equity positions, wherein the Center might actually buy ownership in the stock of the company. These might range from conventional venture capital type deals with a healthy set of covenants which could actually involve the Center in managing the business if its performances slipped below specified minimums to more relaxed or even concessionary investments which simply provide "patient capital" to a business which needs and deserves it. In all equity instances, a provision would be in place for the business to buy out the Center's equity with specified

procedures for computing current value.

6. The Center(s) should be staffed by a small number of highly qualified people well versed in the full range of sound business practices, including accounting and finance, and marketing and sales. The expert consultant group who would be drawn upon to provide advice and assistance to individual enterprises should be the "right person" type of expert with deep and practical business and management experience in the functional area of the individual business enterprise assisted.

They could include individuals whose time was donated by a corporation and those who would be reimbursed on an hourly charge rate basis. They could include individuals similar to those recently retired business executives in the International Executive Service Corps who help individual businesses abroad improve their operations, and in SCORE who provide similar services to firms assisted by the Small Business Administration.

There should not be any "Indian Preference" for the business experts hired by or used by the Center(s). The teams felt strongly that no credit whatsoever should be given for past economic development consulting with tribes. They suggested the prime criteria for selection should be past direct experience in operating successful businesses and/or in helping others to do so outside of a context of government subvention.

7. The teams also suggested consideration be given to the creation of a series of locally based community development corporations (CDCs) to work directly with tribes, and other local governments, institutions and businesses and the suggested national or regional Indian Business Development Center(s). Such a locally based CDC could serve as a development agent whose primary goal would be the development of a particular geographic area. The CDC would be able to collaborate with various public and private parties without being controlled by political or profit goals. Without being part of a governmental structure, it would be able to attract the kind and amount of public resources which may be necessary to an area in chronic distress, whose survival would depend on the quality of its decisions, and successful performance, and which would be able to maintain its effort over the long run, perhaps over 20 - 50 years. The Ford Foundation and other national and international organizations have had success with this type of approach.

A CDC which was governed by residents of a reservation, and had a good working arrangement with the tribal government would apppear to offer a possible compromise between the need for independence from tribal government control on the one hand and the worries about exploitation and preservation of culture that are at the root of some of the desires for control on the other.

With a shortage of enterprises or entrepreneurs ready to start or expand businesses, the local based CDC could assist at the initial stages in various advocacy, brokering, information gathering, research, financing or other strategies that might be needed to capitalize on opportunities for business development.

The CDC could also have a role in the nurturing of very small businesses. The Center(s) concept would be useful in working with large and/or sophisticated ventures or opportunities. However, the cost of working with and nurturing very small initiatives would be prohibitive.

Experience elsewhere indicates that how the CDC's are funded would be an important issue. The teams suggested that the funding sources should not be controlled by politicians. The funding source must be able to make a long term commitment to a CDC and must base its support on a level of independence from both the tribal government and the Bureau of Indian Affairs. Continued support should depend on the accomplishments of the CDC and funding should contribute so the asset base of the CDC can be slowly developed through its competent management of resources and projects.

TRIBAL WATER RIGHTS ISSUES:

PROSPECT FOR

ECONOMIC DEVELOPMENT

TRIBAL WATER TRUST CORPORATION

Tribal Government Water Authority

- Oversees and establishes overall tribal water policy
- Sets guidelines for water quality control
- Sets priorities for water use control
- Sets zoning requirements for water development

Tribal Water Trust Corporation

- Tribal members as corporate shareholders
- Board of Trustees to manage the trust asset according to tribal government policies
- Implements policies thru Water Quality Control Board and Water Use Control Board

Tribal Government Water Authority

The first step following quantification of tribal water rights is to establish a tribal water authority to provide administrative oversight for water use and control. A complete inventory of the tribe's water assets and a determination of their quality use availability needs to be completed. The federal government, specifically the U.S. Fish and Wildlife Service, the U.S. Geological Survey, the Bureau of Reclamation, the Army Corps of Engineers and the Bureau of Indian Affairs, should provide extensive technical assistance to any and all Indian tribes requiring such assistance.

Upon completion of the inventory the tribe's water requirements need to be identified and quantified. Sewage, sanitation, domestic uses and other municipal uses need to be considered. After all municipal necessities are met then the water authority should set standards for water use and control for the excess water supplies.

There are essentially four distinct classifications for water use: instream, agricultural, waste disposal and amenity uses. Instream uses, such as navigation and the generation of hydroelectric power, do not significantly affect water quality and their development is usually determined by other factors such as environmental concerns. Agricultural uses within the same watershed usually contribute to ground water and other return flows so their effect on water quantity and quality is minimal. Amenity uses include swimming, fishing, boating, industrial processing and aesthetics and do not significantly alter water quality. Waste disposal uses are in direct competition with amenity and agricultural uses because an improvement in water quality would add to the value of agricultural and amenity waters, whereas waste disposers would be harmed since improvement could occur only if less waste were discharged into the water.

The tribal government is obliged to decide how these uses will divide the resource and then how to enforce its decisions. Restrictions on water use must be arbitrary and enforcement must be stringent. Determining priority of use is addressed, at least theoretically, by the economic principle that the value of the harm inflicted should be directly proportional to the value of the quality gained. However, this principle works only if the values are comparable. Unfortunately, amenity uses do not have values that can be accurately measured, so when measuring the "gain" in amenity-use values it is impossible to compare it to a corresponding "loss" in waste disposal-use values. Since economic theory cannot be easily applied, political decisions based on social pressures determine the resource use. For example, once there is a social demand for "pollution control", political entities institute anti-pollution restrictions incrementally until social pressures about their cost outweigh pressures about pollution. Ultimately, what is unique aoout the ownership of water is that the government must decide, without the benefit of economics, how the asset is to be divided among different uses.

Once quantification of excess water supplies and priority of use has been determined the water authority must determine the percentage or specific amount of excess water that can be used for each priority use. For example, the authority may decide that 50% of the available water should go for agricultural uses or that 2,000 acre-feet of water should be for agriculture. The availability of water, the constance of the water flow, and the importance of the priority use should be considered in this decision. The authority must also decide how much waste may be disposed into the water system. A standard unit for measuring waste must be adopted and it must take into consideration the various types of wastes and their effects on other uses. Next, the authority must decide where certain uses should take place by designating specific zones or regions for water use. For example, the water authority may decide that 10 equivalent tons, or standard units, of waste per year are to be dumped into the reservation river system. The authority also decides that the waste disposal sites are to be located in a region in the lower reaches of the river system, downstream from all amenity and agricultural uses.

The most important enforcement activity the tribal water authority will confront is in the area of water quality control and the best method to accomplish its objectives is a charging system. Under this system the water authority would levy fines against waste dischargers for exceeding government levels. Waste dischargers should be monitored collectively and not individually in order to keep administrative costs at a minimum. The monitoring could take place at the furthest downstream point from the last discharger and any violation of the authority's quotas would result in every discharger sharing the costs of the fine.

Initially, a certain amount of experimentation would be necessary to determine the level of charge required to attain the acceptable level of waste discharge. The level of charge should exceed the costs to the dischargers for reducing their wastes. If the waste dischargers simply pass on the fines to the consumer, then the fine can be set at such a prohibitive rate that consumptive patterns would change to less expensive products. The charging system of enforcement is clearly the most cost-effective and efficient means of implementing government standards and provides the incentive both to reduce waste and to improve the technology of treating waste before it is discharged.

The tribal government water authority is responsible for setting broad guidelines for water quality and quantity control and for ensuring that the public good is secure and protected. Ultimately, tribal water rights should be protected by the federal trust responsibility and not be sold or forfeited without approval of the Secretary of the Interior; however administration of this trust asset should be the responsibility of each tribal government in the excercise of tribal self-determination.

Tribal Water Trust Corporation

The Corporation would be a tribally-held business enterprise with each tribal member representing a shareholder. The Corporation's principle objective is to market the tribe's excess water supplies for the greatest economic return within the guidelines established by the tribal water authority. Each shareholder would receive dividends from all or part of the profits depending on distribution plans determined by the Corporation's Board of Trustees.

The trustees should be elected by the shareholders in staggered terms of ten years each. There should be no provisions for re-election and recall could be accomplished only through 2/3 majority vote of the shareholders. Before electing trustees the shareholders should allow a profit pay incentive for the trustees to ensure the maintenance of a business environment with as little political interference as possible.

The Board of Trustees would conduct corporate business through two subordinate boards - the Water Quality Control Board and the Water Use Control Board. Each of these boards would be semi-autonomous but the Board of Trustees would retain plenary authority and responsibility for the Corporation's actions.

The Water Quality Control Board would consist of one-half of the membership of the Board of Trustees and would primarily be responsible for administering water quality control standards established by the tribal water authority. One means of implementing water quality standards is to issue "pollution permits" and sell them on the open market. If the water authority should establish that no more than 10 equivalent tons of waste should be discharged into a water system per year for the next five years, then the Corporation can issue an equivalent amount of permits and require that a permit be obtained before waste could be discharged. The WQCB would then auction the pollution permits to the highest bidder on an annual basis according to the water authority's pre-set quotas.

The marketplace would exert economic pressures on the bidding process, and among permit owners once the auction has concluded. The market would be constant because firms that found they had excess rights would be in the sellers market, while firms in need of pollution rights would be in the market to buy. Anyone could buy permits. Agricultural and amenity users could buy permits and simply refuse to use them, which would increase the value of their water. The great virtue of this marketplace is that the price is set by the competition between buyers and sellers of permits. Essential to the existence of an efficient market is the inflexible resolve of the tribal water authority not to alter the allowable level of pollution within the decided time frame, regardless of the political pressures to increase the level.

It is important to note that the pollution rights market is not a "true" economic market because it is not affected by the forces of supply and demand. The tribal water authority arbitrarily determines the pollution quota, but when pollution permit prices rise it does not mean that the water has become more valuable, it means that the water use has become more valuable. The value of water is directly proportional to its degree of quality. A market increase in the value of water will necessarily result in the development of water-use efficient technology.

The Water Quality Control Board should be responsible for conducting the auction and serve as broker between buyers and sellers. The Board should be responsible for maintaining a tracking system for all pollution permits and should advertise any pending transactions so any potential damaged parties could become aware. The Board should establish a trust fund from the auction proceedings and should be responsible for the financial management of the fund. Similarly, it might be prudent for the Board to bid for its own permits so it may sell them on the open market when the price may be more lucrative.

The Water Use Control Board would consist of the other half of the membership of the Board of Trustees and would primarily be responsible for administering water use control priorities established by the tribal water authority. Like the Water Quality Control Board, the Water Use Control Board would issue an equivalent number of permits for each acre-foot of excess water supply and auction those permits to the highest bidder according to the priorities set by the water authority. For example, if the water authority decided that 2,000 acre-feet of water shall be excluded only for use by agricultural users, then only agricultural users would be allowed to bid on those permits. On the open market those agricultural use permits could only be traded among agricultural users to ensure conformity with government policies.

It is likely, though, that these permits could be traded freely without specific concern for priority of use. This is possible because waste disposal uses could be zoned away from waters to be used for amenity and agricultural purposes. By removing the waste factor the flexibility of use for the remaining water permits is at its maximum level. At this point water can be utilized interchangably and title to permits can be easily transferred as climate, demographic, and economic conditions change. In the short run, rainfall and temperature conditions can be unpredictable so optimum flexibility is necessary to meet the economic pressures of supply and demand. In the longer run, as population patterns change and economic development occurs water delivery should be easily available to any redistribution plan adopted by the water authority. As stated before, any tribal plan in water use should be established for a specific time, after which it would be subject to changes and modifications to meet existing conditions. Stability and consistency in water authority policies is necessary for the maintenance of an efficient water market. As the economic marketplace is controlled by expectation and speculation, security of tenure in the use of the commodity once given must be maintained.

The Water Use Control Board should have the same administrative functions pertaining to serving as a broker, advertising transactions, maintaining a tracking system, and managing the trust fund as the Water Quality Control Board.

Summary

Once tribal water rights have been quantified a tribal government must determine the extent of its assets and the manner in which it will use its water. A tribe can either utilize the water itself or permit others, Indians or non-Indians, to use it. A tribe should analyze its own water requirements, determine the extent of the market for other users, and contrast the costs and benefits of tribal use versus non-tribal use. Tribal priorities and economic conditions should play an important role in the decision of how best to utilize its resources. Since industrial and energy development has increased while water supplies have decreased, the market for Indian water resources should be overcrowded.

One mechanism for turning what were once "paper water rights" into real economic development would be is the Tribal Water Trust Corporation. The Corporation would be responsible for managing the trust asset (water) for maximum financial return within guidelines established by the Tribal Water Authority. An elected Board of Trustees would direct the Corporation and implement Tribal Water Authority policies through the Water Quality Control Board and the Water Use Control Board. The Tribal Water Authority would be responsible for setting broad guidelines for water quality and quantity control and for ensuring that the public good is secure and protected. Within those guidelines the Corporation would issue water-use permits and sell those permits on the open economic market. Due to the likelihood that non-Indian users will be displaced from the quantification of Indian water rights, there should be a market for users, which would increase the value of Indian water resources.

Additionally, tribal water rights should be protected by the federal trust responsibility and not be sold or forfeited without the consent of the Secretary of the Interior. However, administration of this trust asset should be the responsibility of each tribal government in the exercise of tribal self-determination.

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